

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, JANUARY 9, 2002

7:30 P.M. E.S.T.  
CONFERENCE ROOM

CALL TO ORDER

ELECTION OF OFFICERS

ADOPTION OF RESOLUTION

BOARD OF ZONING APPEALS MINUTES FOR  
DECEMBER 12, 2001

OLD BUSINESS:  
*Chuck Pocock (27-1001)*

NEW BUSINESS:  
*Nyona South Mud Lake Conseruancy (30-1101)*  
*Brian Nelson (31-1201)*

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT



FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

Mark entertained a motion to adopt the Resolution 01092002 for the Fulton County Board of Zoning Appeals. Dan Walsh moved to adopt the Resolution 01092002, meeting date and time for the Fulton County Board of Zoning Appeals. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, Steve Furnivall, and Mark Martens being in favor and no one opposing.

RESOLUTION 01092002

A RESOLUTION OF THE FULTON COUNTY BOARD OF ZONING APPEALS, OF THE COUNTY OF FULTON, INDIANA, ESTABLISHING MEETING TIMES FOR 2002.

WHEREAS, the Fulton County Board of Zoning Appeals has established that they will meet on the second (2<sup>nd</sup>) Wednesday of each month at 7:00 P.M. local time in the Commissioners/Council Room at the Fulton County Office Building.

WHEREAS, the Fulton County Board of Zoning Appeals have established meeting times as set out under Indiana Code 36-2-2-6 et. Seq.;

NOW THEREFORE, Be It Resolved by the Fulton County Board of Zoning Appeals that:

1. The Fulton County Board of Zoning Appeals will meet on the second (2<sup>nd</sup>) Wednesday every month at 7:00 P.M. local time in the Commissioners/Council Room at the Fulton County Office Building.
2. Other meetings will be scheduled and a public notice will be given.

Adopted this 9<sup>th</sup> day of January, 2002

Fulton County Board of Zoning Appeals

Mark Martens  
Dan Walsh  
Steve Furnivall

Attest: Erica A. Ginther  
Administrative Secretary

Mark Martens asked for any additions or corrections to be made to the December 12, 2001 Board of Zoning Appeals minutes. Being none, Dan Walsh moved to approve the December 12, 2001 Board of Zoning Appeals minutes. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Steve Furnivall, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

IN RE: OLD BUSINESS

CHUCK POCOCK  
ADMINISTRATIVE APPEAL  
1 ACTION

Chuck Pocock, Docket #BZA 27-1001, Administrative Appeal. Mark Martens noted the appeal is regarding the amount of debris and refuse/waste matter placed upon property known as 4961 N 200 W Rochester, IN 46975. Casi Cramer had nothing further to add but presented overheads of the property, showing the Board (see attachments labeled A & B) the before and after effects of the cleaning process taking place. Mark asked when the most recent pictures had been taken. Casi stated they were taken today, (January 9, 2002). Casi noted all of the clean-up pictures shown were either taken on January 9, 2002 or December 12, 2001.

Ted Waggoner, Representative Attorney for Chuck Pocock, gave the Board a set of pictures showing the progress that has been made on the property (see attachments labeled C). Ted also presented the Board with a note, from Barbara Lewis at ML Metals, Inc; stating that in the last forty-five days ML Metals, Inc has purchased approximately fifteen tons of scrap metal from Ron Scheffer (see attachment D). Ron Scheffer is the tenant of Mr. Pocock's property. Ted explained that while he and Mr. Pocock were meeting with the BZA on November 14, 2001; Mr. Scheffer was meeting with Tracy Pocock (Chuck's wife) regarding the condition of the property. Ted stated there is less scrap metal on the property now than before the zoning ordinance became effective in November 2000. Ted noted the first letter was sent out to Mr. Scheffer, from Casi Cramer, with copies forwarded to Chuck. The second letter that brought them to the meeting was either a notice or a citation of violation. Ted feels it is appropriate for the Board to note the situation and dismiss the citation. Ted explained the land is being cleaned and he feels the tenant has achieved what the Board and Mr. Pocock want done. Ted feels since the Board allowed Mr. Pocock additional time the situation has been remedied. If the citation is not dismissed, a question arises about when the letter for the citation was sent. The letter was sent on the same date the ordinances were modified by the Commissioners, which alleged expanded use of the property. Ted believes no evidence exists in the few hours between the publication deadline and the time the letter was written saying the operation had expanded. Ted believes they fell into a technicality crack and he doesn't want to have to pursue that. Ted stated resolving this today and knowing that the property will never be in that condition again; would be the best way out of the situation.

Mark Martens entertained questions from the Board to the staff or petitioner. Joe Wegner questioned if the tenant, Mr. Scheffer, was still on the property. Ted Waggoner stated he is and he has changed the way he runs his business. When they first had talked about getting rid of him as a tenant, it was because they did not think that he would follow through with the clean up process. Ted explained that he is cleaning up the property and is negotiating with Mr. Pocock to stay on the property. The tenant has had a scrap metal business on that property for quite some time before zoning went into effect. The business recently got out of hand and will not happen again.

Joe Wegner questioned if they felt the clean up was going to end at this point or if there was additional work that needed to be done. Chuck Pocock explained when he acquired the property, Mr. Scheffer came with it; since there was no written lease. Part of the terms and conditions for him to remain, if he does, will consist of him signing a lease that will spell out what he can and cannot do on the property. Chuck stated if Mr. Scheffer cannot obey the conditions on the lease, he would have to move his trailer and leave the property. Ted Waggoner stated the lease would be a residential lease, not a commercial operation lease. Ted explained negotiations are being made with

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

him right now. He has been told to leave, but he is trying to stay, so the Pocock's are trying to work with him to avoid going to court. Chuck Pocock added that Mr. Scheffer has lived there for twenty-seven years, so he cannot just kick him off the property.

Steve Furnivall questioned if Casi Cramer, Plan Director, was satisfied with what has been done to the property. Casi is not satisfied that he can stop cleaning the property but she is satisfied with what he has done thus far. Casi understands the ordinance to state, once you have de-grandfathered yourself, you cannot go back to what was there before; but that you have to comply with the entire ordinance. Greg Heller, BZA Attorney, stated that would be correct. Greg understands that the property has been cleaned more than what the ordinance originally requested. Casi stated he has cleaned most of the property, but not entirely. Casi questioned if Mr. Scheffer could still have the things that were there before the implementation of zoning on his property. Greg stated Mr. Pocock is saying this will not be the nature of a business on the property anyway. Ted Waggoner agreed and explained the use of the land will change back to agricultural, but he feels it would be unfair to tell the Board that there will never be any scrap metal on the property ever again. Ted stated under the new lease signed by Mr. Scheffer, the scrap metal would not be allowed to accumulate. The scrap metal currently on the property will be removed but once it is completely removed, then it would be considered a de-grandfathered situation. Ted explained de-grandfathering is not saying, "well, you stepped over a line and you cannot step back". Casi Cramer stated that she understood it as the use of the actual property was agricultural residential on which he operated the scrap metal business, but once he expanded the business he would have to comply with the ordinance completely. If Mr. Scheffer wanted to continue the salvage business he would have to rezone that property, because salvage businesses are not allowed in the AG (agricultural) District. Greg Heller stated there would not be an operating salvage business. Casi stated there would be, according to Ted Waggoner's explanation of the fact he would be doing salvage work in terms of cleaning up; but it will not increase over the amount it was at the time of the adoption of the ordinance or even to this point. Ted stated the property is in the cleaning process, but he will not promise that another piece of scrap metal or equipment will not show up on the property ever again. Greg Heller sees it as having been a problem and the problem has been corrected. Casi agreed the problem has been corrected, but the continuation of the salvage business is her concern. Casi explained that anyone wanting to start a salvage business in the AG District would have to rezone their property to be able to do so. Just because he had four things on his property before zoning took effect does not mean he can continue to have a maximum of four things on his property after he is de-grandfathered. Chuck Pocock stated he thought it was more of a hobby than an actual business, since Mr. Scheffer has a full-time job. Chuck explained in no way was his property being used as a business nor will it be in the future. Mr. Scheffer's scrap metal has accumulated, due to the fact that prices have gone down. Mark Martens stated there is no plan or intention for what is currently on the property to expand. Chuck stated it would continually shrink, by virtue of lease agreement. The maximum that should be seen on the property at one point in time would be what is there today. Chuck stated that he would not allow the debris/refuse to expand to that point again.

Mark Martens questioned if a person is put in violation, do they have to return to ground zero. Casi Cramer said that would be complying with the ordinance in its entirety. Greg Heller stated people can have scrap metal on their property, but that does not mean they are operating a salvage business. Ted Waggoner stated as soon as the prices for the salvage rises, the scrap would be sold. Joe Wegner asked if the tenant would still operate the salvage business on the property under a cleaner, stricter lease. Ted explained his lease will state that the property will be cleaned up and will be only a

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

residential property. Ted said it is not reasonable to say if the lease is signed a week from Thursday, that on Friday he will not be hauling anything from the property. The tenant will not be operating a business the lease will prevent that from happening.

Joe Wegner asked if in six months everything would be under control. Ted stated everything would be under control, compared to what it was before the lease is signed. Mark Martens stated there would be a certain amount of grace time that the tenant will be given to return the property to a residential; with the intent that the property be cleaned. Chuck Pockock stated the property would be cleaned. Mark stated, they are saying that the property would not be at the scale it is; even today.

Mark questioned again if violators have to return to ground zero, to comply totally with the zoning ordinance. Greg Heller stated they have to comply totally with the zoning ordinance, but since they expanded and lost the grandfathering status to stay in a salvage operation, do they have to be rezoned. Greg stated in this particular situation, it does not sound like there is going to be a scrap operation. He is unsure if the Board should pursue the question to deal with this issue.

Steve Furnivall questioned if the lease was going to preclude him from having any kind of scrap operation on the property. Ted stated a scrap intake operation correct. Steve asked if that meant no more scrap would be taken. Ted said there would be no more scrap taken onto the property.

Ted does not find in the zoning ordinance, under the enforcement and penalties section, where it states anything about de-grandfathering or taking a violation back to ground zero. Casi Cramer stated it is under the non-conforming section. Mark Martens feels as if Mr. Pockock has gotten the situation under control, the property is being cleaned, and that is the intent of the Board. Joe Wegner thinks that Chuck has shown the Board good faith, but is concerned with what will happen if the situation is not remedied in sixty days. Mark explained that there are documented pictures on file showing the worse case scenario from which the Board can create a base line. Mark stated if it expands over what is on file, the Board will know by looking at the pictures. Board discussion followed regarding whether the situation should be tabled or if they feel comfortable dismissing the appeal, due to the fact that the property is being cleaned. Several Board members felt that when Mr. Pockock was notified of the problem and asked to do something about it, he did.

Mark Martens opened comments to the public. Mark asked for anyone in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he then asked for anyone opposing the petition to do the same. Being none, Mark asked for Board discussion. Being none, he entertained a motion to approve, disapprove, or table the petition.

Dan Walsh moved to dismiss the administrative appeal, Docket# BZA 27-1001, and any fines that have accrued during this action. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Steve Furnivall, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

IN RE: NEW BUSINESS

NYONA SOUTH MUD LAKE  
CONSERVANCY DISTRICT  
SPECIAL EXCEPTION  
2 ACTIONS

Nyona South Mud Lake Conservancy District, Docket #BZA 30-1101A & B, Special Exception. The Nyona South Mud Lake Conservancy District is requesting a special exception within the Agricultural District (AG) and the Lake Residential District (R3) to allow the installation of a Mechanical Sewage Treatment Facility and a government building, which will service the Conservancy District. Mark Martens noted the Board would be discussing part A first, concerning the Mechanical Sewage Treatment Facility. Casi Cramer stated the facility would be placed upon approximately 3.14 acres of land. The property is situated within both the AG and R3 District. The R3 District allows Sewage Treatment Facilities and government buildings as special exceptions but the AG District does not list either. Even though the AG District does not allow Sewage Treatment Facilities or government buildings Casi has written them in under special exceptions in the AG District. Casi believes it was just an oversight in the ordinance. Casi presented an overhead aerial of the site location (see attachment E). Casi explained once the waste goes into the facility and is treated, it would be released into Mud Creek below the dam. Mud Creek eventually empties into the Tippecanoe River. Casi presented an overhead layout of the actual facility (see attachment F). The building is approximately 55 feet long and 15 feet wide. Casi's only concern is that the proposed entrance is located on a hill and there is a 90-degree curve approximately 500 feet to the south of the southern most property line. Casi spoke to Mr. Roe, concerning the entrance, before the meeting and questioned him about placing the entrance on the crest of the hill to ensure public safety. Casi stated Mr. Roe did not seem to think moving the entrance to the crest of the hill would be a problem. The property on which the facility would be located is all predominantly farm field and wooded area. One of the reasons for placing the facility in this particular spot, is that the prevailing wind comes from the west and there are not many residences to the east of the facility; since it is all farm land. The intent is to save as many trees as possible to help create a windbreak. The facility will serve a proposed 513 residents, with a maximum capacity of approximately double that figure. This is not a combined sewer facility, which takes combined storm water and wastewater, but is designed solely to handle the flow of wastewater from the Conservancy's residents. The Fulton County Health Department has been encouraging the Nyona South Mud Lake Conservancy District to build a sewer treatment facility for some time and have donated money in the past to aid the initial study. Casi explained this particular area has immense trouble with septic systems. When most of the homes around the lake were built they were used as vacation homes, not permanent dwellings. A septic system that would be large enough to accommodate the family only during the time span that they were there vacationing. More people are now permanently living on the lake and the septic systems were not built to accommodate a permanent dwelling. The pumps, which create a flow of oxygen through the Aeration tanks, are enclosed in a building and create a minimal amount of noise. This sound may be audible outside the building through the air vents. Casi spoke to Wes Burden, Health Department Environmentalist, asking his opinion of the smell associated with the facility. Wes's opinion, as well as Mr. Roe's, is that the smells associated with the facility would be very minimal. Casi explained that from her discussions with Mr. Roe and others, all factors were taken into account to minimize the impact any smell may have on the residents. The sludge created by the facility is a dry form, which will be disposed of by a waste management company. The sludge will be placed in storage bags and taken to the landfill for disposal. The estimated process for disposal of this sludge may have to be completed on a quarterly basis, but is determined upon the number of residents utilizing the facility. The facility will have a part-time employee, until they can

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

obtain their certification allowing them to test the water on-site. The employee may become full-time if needed. The Conservancy District will be sending water samples to an outside lab for testing until someone is certified to conduct the tests on site. The traffic flow should be very minimal on a regular basis. The Conservancy District will be purchasing the property from current owner, Robert Zartman. Casi recommended approving the special exception for a Mechanical Sewage Treatment Facility.

Ron Roe, Conservancy District Board President, explained the location of the facility in the wooded area would act as a windbreak and help cut down the visibility of the facility. The wooded area will also help in cutting down the noise coming from the facility. The pipes coming from the facility would all be buried and would run from the facility, following the road, and then discharged into Mud Creek. The treated water will discharge into Mud Creek below the dam and will have no impact on the surrounding lakes.

Ben Adams, Schnekler Engineering, stated the entrance had originally been placed at the extreme north end of the property. He feels there would be no problems created by moving the entrance to the crest of the hill. Ben said a Treatment Plant Office would be built on the property and utilized as a meeting hall for the Conservancy District. It is possible, in future plans, that a licensed operator and a Lab/Testing Facility will be placed inside the Treatment Plant Office. However, all of their tests will be sent to other facilities upon beginning. Ben explained originally they were going to put in a steel tank facility, but that has been changed to a concrete tank facility. The facility will all be underground, allowing all of the sewage to drain into an oxygenated tank. It will sit for 24 hours, the top layer will be skimmed off, and then dried with ultra-violet light ridding it of all the bacteria and breaking down the sewage so that it can be discharged into the stream. Ben stated the type of septic systems that most of the homes around the lake currently have are more harmful than adequate. A fence would probably be built around the facility to keep trespassers out. Ron Roe added that a backup power system would be added to keep the facility operating, during a power loss. Ben explained the facility would have a low-pressure grinder pump system, which removes the sewage from the home and places it into a smaller grinder pump located on individual properties. Ben stated this process helps to eliminate the smell coming from the septic. Ben said they are in the preliminary stages of creating this facility. The district has requested funding from the USDA Rules Development Agency and they are awaiting their answer.

Mark Martens entertained questions from the Board to the staff or petitioner. Joe Wegner questioned if they had the permits they needed to discharge into the Tippecanoe River. Ben Adams explained he has already received a waste flow allocation from the Indiana Department of Environmental Management (IDEM), where the affluent limits are set and they had no problem with discharging into Mud Creek at this point. Casi Cramer questioned if that was part of the NPDES (National Pollutant Discharge Elimination System) Program. Ben stated that was the first step in the program. Casi asked if they had submitted the NPDES Permit yet. Ben stated they have not received the NPDES Permit yet. Casi a permit is not given, until everything else is approved. Joe questioned if doubling the capacity of the residential area was for safety or for growth of the community. Ben said the system would not be designed for additional growth, but would be more of a safety factor. The system will be designed to handle what is currently there. Ron Roe stated there would be 386 residents on the lake using this system and a potential of 513 residents. Expansion has already been figured into the number of residents and the maximum capacity for the system. Joe questioned if the community had been asked how they felt about this new system being installed. Ron said they originally started out with a Fact Finding Committee, which obtained

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

information and then a public meeting was held. Ron explained approximately 150 residents attended the public meeting and a vote was taken asking them if they wanted the Conservancy to proceed with this project. The voting resulted almost unanimously in favor of the system. The residents were informed that meetings would be held periodically to keep them aware of the project. Joe questioned if it would have been easier to just rezone the property to an R3 District, so two different districts do not split the property. Casi stated it would not be easier for the Conservancy because, it would cost them more money to do so. The ordinance allows Casi to write things in under special exceptions. Greg Heller stated if it were rezoned, they would still have to come before the BZA and ask for a special exception. Casi explained it would have been an extra unnecessary step for them to take. Steve Furnivall asked if all residents in that area would be required to hook into this system. Ron stated that they would, but some might appeal, leaving the decision to the Conservancy Board. As it stands right now in the areas the treatment facility does accommodate, those residents will have to hook into the system. Mark Martens asked for any further questions by the Board to the staff or petitioner. Being none, he opened for public comments.

Mark Martens asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Catherine Collins; 3028 SE Lakeshore Dr, Macy; stated she has lived in this area all of her life and she knows what it is like to have raw sewage running into the lake. Catherine is thrilled to be getting this system installed. She explained when her parents lived on the lake; they had the forethought of putting in two five hundred gallon septic tanks when they built their house 40 years ago. Her neighbors dug up their septic tanks two summers ago and found out they had two fifty five gallon barrel drums. Catherine realizes it is going to cost the residents some money, but feels it would be better than having to worry about your neighbors septic backing up into your yard or into the lake. Ken Hutchins, Conservancy District Board Member, explained that the septic tanks would be collapsed and filled with sand. Al Stoner; 2980 SE Lakeshore Dr, Macy; questioned where the entrance to the facility would be placed, since he lives across the road from where the facility is being placed. Al further questioned if the trailers on 350 E would be committed to hook up to the system or would they be hooked into one. Mark Martens stated that would be a question to ask at the next Conservancy District Board meeting. The BZA only considers whether or not the facility can be built. Al Stoner questioned if the entrance would be at the top of the hill. Mark stated the BZA is recommending that it be placed at the crest of the hill. Casi Cramer explained prior to building anything, a permit will have to be obtained from the Plan Commission Office. Part of that permit will be that the entrance be placed at the crest of the hill and the Building Inspector will check to make sure the entrance is placed at the crest of the hill. Ron Roe added when making the decision on where to locate this facility, they only had a couple of choices. One choice was to send the sewage to the town of Fulton or building their own facility. By creating their own facility, the Conservancy District will be reducing the cost by approximately 1.3 or 1.4 million dollars. Mark Martens asked for any further comments in favor of the petition. Being none, he asked for comments opposing the petition. Being none, he asked for any additional comments from the staff, board, or public. Being none, Mark entertained a motion to approve, disapprove, or table the petition.

Mark questioned if they needed to note in their motion that the entrance would be moved to the crest of the hill. Casi Cramer stated they could if they wanted, but it was not necessary since it is part of the Location Improvement Permit. This will be checked when a permit is obtained from the Plan Commission Office. Dan Walsh moved to approve the special exception, Docket #BZA 30-1101A, for the installation of a Mechanical Sewage Treatment Facility in an AG and R3 District. Debbie Barts seconded the motion. Joe Wegner stated he would like to add the condition, that a

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

fence be placed around the facility in the motion. Dan withdrew his motion. Debbie withdrew her second. Dan Walsh moved to approve the special exception, Docket #BZA 30-1101A, for the installation of a Mechanical Sewage Treatment Facility in an AG and R3 District with the condition that a fence be placed around the facility. Debbie Barts seconded the motion.

The Board then proceeded to fill out their findings of fact forms (see attachments labeled G). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Steve Furnivall	Yea
Joe Wegner	Yea
Debbie Barts	Yea
Dan Walsh	Yea
Mark Martens	Yea

The motion to approve the special exception, Docket #BZA 30-1101A, for the installation of a Mechanical Sewage Treatment Facility in an AG and R3 District with the condition that a fence be placed around the facility passed with five votes in favor and no one opposing.

The Board then proceeded with part B, Docket #BZA 30-1101B, Special Exception. Part B is regarding the construction of a government building, which will service the Conservancy District. The government building will be located on the same piece of property as the Mechanical Sewage Treatment Facility. Mark Martens asked if Casi Cramer had anything to add about the government building. Casi had nothing further to add. Mark asked if Ron Roe or Ben Adams had anything to add regarding the government building. With both replying no, Mark asked for any comments from the Board. Being none, he asked for anyone in favor or opposing the petition to please rise and state their name, address, and reason for attending the meeting. Hearing no comments he asked the Board for any last questions or comments. Being none, Mark entertained a motion to approve, disapprove, or table the petition.

Joe Wegner moved to approve the special exception, Docket #BZA 30-1101B, to build a government building for the Conservancy District in an AG and R3 District. Dan Walsh seconded the motion.

The Board then proceeded to fill out their findings of fact forms (see attachments labeled H). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Dan Walsh	Yea
Debbie Barts	Yea
Joe Wegner	Yea
Steve Furnivall	Yea
Mark Martens	Yea

The motion to approve the special exception, Docket #BZA 30-1101B, to build a government building for the Conservancy District in an AG and R3 District passed with five votes in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

IN RE: NEW BUSINESS

BRIAN NELSON  
SPECIAL EXCEPTION  
1 ACTION

Brian Nelson, Docket #BZA 31-1201, Special Exception. Brian Nelson is requesting a special exception within the Agricultural District (AG) to allow a Remote Control Vehicle (RCV) racetrack and hobby shop on his property. Mr. Nelson's property is located at 1987 W 50 N, Rochester, and is approximately 2.76 acres. Casi Cramer explained that RCV racetracks and hobby shops were not listed under special exceptions in the AG District, but she did ask the Plan Commission for their interpretation regarding this situation. The Plan Commission's opinion was to write it in under special exceptions in the AG District. Casi explained the RCVs would either be gas powered or battery powered. Farm fields mainly surround the property except to the south of Mr. Nelson's property where a house sits upon .60 acres. The next closest dwelling would be between a quarter and a half mile from the property. There is a mobile home on the property, along with Mr. Nelson's house. Casi understands from prior conversations with Mr. Nelson, this would be a family oriented business catering to the general public; as well as being reserved for special occasions such as birthday parties. Casi stated Mr. Nelson had originally thought about renting portable toilets to accommodate people's needs, but now has recently decided to place a restroom in the barn. The barn would be used for the hobby shop. Casi explained Mr. Nelson is coming before the Board for a special exception because not only is it a hobby, but he will be asking the general public to come out hold races. Mr. Nelson may also, at some point in time, collect an entry fee to utilize as prize money for the winners. The number of people attending these races would depend upon the amount of interest shown by the public in the sport. Mr. Nelson has foreseen possibly having three tracks on his property for these RCV races. The hobby shop would serve as a store to sell parts, new or used RCVs, and could possibly be involved in repairing the cars. Casi stated Mr. Nelson would have to follow the parking standard rules for PK-02 in the ordinance. Mr. Nelson has talked about putting down limestone for the drive and parking area. Casi was unsure of how many parking spaces would be needed, since it is unknown how many people will attend the races. Casi added she knew the Board would be concerned with the noise created by the cars and how it would affect the neighbors. Mr. Nelson also had stated to Casi that he would not be interested in having night races, so there would be no need for lighting. Casi took all of these things into consideration when making her recommendation. Casi's recommendation is to approve the proposed Remote Control Vehicle racetrack and hobby shop with the possible following conditions: no races are held/ran after 6 pm; a limited number of employees; and a limited number of vehicles allowed on the premise at one time. Casi presented an overhead of the proposed racetracks and hobby shop (see attachment I). Casi also presented an overhead of a picture, which she took, of Mr. Nelson's barn, showing how close the neighboring house is located (see attachment J).

Brian Nelson was concerned with the time frame of when he can allow the cars to run on the track. His intention was to allow people to run their cars until approximately 8 pm, which would be during summer hours when it is still light out at 8 pm. A lot of people do not get off of work until 5 pm, so they would not really have time to come out or bring their children out, if they can only race cars until 6 pm. Brian has no idea how many people he will have on the property at one time. This would depend on whether or not the sport "takes off" with the general public. Brian was thinking of holding races on Saturday afternoons for sanctioned days like "Track Day". The only time Brian expects the cars to be running late would be during the week when people come out to practice or play on the track. Mrs. Nelson stated her and her husband are not expecting to make a lot of money from this project, but their intention was to have a family oriented business that the whole

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

community could enjoy. Steve Furnivall stated he likes the concept but he is very concerned with the impact on the neighboring house. Brian Nelson said the neighboring house troubled him also, but he has a problem with putting the tracks in his front yard. His property sits on the corner of 50 N and 200 W and by placing the tracks in front of the barn, Brian will not be able to contain the people and RCVs as well as they can be contained in the back behind the barn where there is fencing. Brian is concerned that, if the tracks are placed in the front yard, a RCV will go off the track and into the road causing either an accident or the possibility that an oncoming vehicle could hit someone. Steve Furnivall voiced concern regarding the noise the RCVs would create. Brian understands that the gas powered RCVs would create more noise than the battery powered RCVs. Steve feels that Brian would need to have a bathroom. Brian agrees with having a bathroom installed, he just has not decided what route he wants to take yet. Steve questioned if the State would require him to install a commercial bathroom. Brian was unsure if they would require that or not. Mark Martens questioned if the tracks were put behind the barn, how they would be contained. Brian stated there is a barbed wire fence going across the back and the side of his property. Mark asked what the Johnson's, owners of the neighboring house, thought of this project. Brian has not spoken to them about the project. Casi Cramer stated she had not received any correspondence from the Johnson's saying they were opposed or in favor of the petition. Mark voiced concern about the tracks basically being right in the Johnson's backyard. Mark explained he is concerned with people on Mr. Nelson's property leaning against the Johnson's privacy fence and destroying it. Mark questioned what Mr. Nelson would be doing to protect the Johnson's fence and how he would be keeping the RCVs and people off of the Johnson's property by a barbed wire fence. He further voiced concern about the dust that would be created from the traffic coming to and from the tracks. Greg Heller stated the Board could create a time frame for the cars to run on the tracks. Greg explained there is a lot of uncertainty on how popular this track and shop will be, so a condition could be added. The condition could state the Board will review the petition again in six months, or a year, to see if any problems have been raised and to see how popular it is. The Board and Mr. Nelson then know whether to continue on with the improvement or put additional conditions on at that point in time. Mrs. Nelson stated the RCVs would more than likely not be running during the winter but they would probably start running them in the spring. The Board discussed making a condition that Mr. Nelson come back within six months for a review. Brian Nelson voiced concern about what would happen if he came back in six months and the Johnson's, at that point in time, had a problem with the tracks and shop. Brian Nelson does not want to spend a lot of money and then come back to the Board in six months and be told that he has to shut down his business, because the Johnson's have a problem with it. Steve Furnivall stated that could be a possibility, but maybe something could be worked out with the Johnson's at that time. Brian explained the whole project hinges on his ability to have it on his property; otherwise he would not be able to economically have the project. Dan Walsh questioned if the parking lot would be behind the mobile home. Brian stated that would be where the parking area would approximately be located. Dan questioned if the parking lot could be moved to the north of the mobile home. Mark Martens explained that way there would be a building or roadway acting as a buffer between the tracks and the Johnson's property. Dan suggested that Mr. Nelson could put the parking lot where he has the proposed tracks located. Mark stated Brian could still utilize his barn for the shop. Dan questioned where the RCVs run now. Brian stated they run them in the yard, since there are only a few of them. Steve Furnivall asked if Brian had gone to visit any other RCV racetracks. Brian has not visited any tracks, but has seen them on the Web. What he has seen on the Web is not what he has envisioned doing on his property. Dan stated there used to be an RCV track in Star City. Brian has not heard of the track in Star City. Joe Wegner explained when neighbors are that close and you are on decent terms with them; it would be the tendency for them to not say anything, even though they

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

may have a problem with the proposed project. Joe is still concerned with the neighbors being so close. Mark stated if it was moved to the north side he could still have the things he wants to investigate and create a buffer between the tracks and the Johnson's property. Mark feels like he cannot approve the petition based on how Mr. Nelson has the proposed tracks set up currently. Joe explained it sounds like a great project for the community, but the Board has to consider the neighbors too. Mark stated, since the fence belongs to the Johnson's, he believes people will be hanging on it or leaning against it to get a better view of their car. Eventually, the fence would be ruined. Mark asked Brian his thoughts regarding the fence and if he perceived that as something workable with the Johnson's. Mark asked Brian if he would like to give the project more thought and come back at a later date. Mark explained the Board could table the petition until next month, if that would give Brian enough time to think things through. Joe Wegner questioned if Brian had gone to any other tracks and asked them about the noise level and what impact it has on neighbors. Brian stated the closest tracks are in Plymouth and Lapaz. They are both indoor electric RCV tracks. Brian explained his track would be entirely outside, unless they limited the RCVs to just electric cars. Brian added that the gas powered RCVs seem to be more popular than the electric. Mark would encourage the Board to table the petition, giving Brian the opportunity to come back next month with a new plan. If he chooses not to come back, the Board will assume that he could not find a feasible way to change the project and the petition will be dropped. Mark explained the way it stands now if the Board votes on the petition, it will more than likely be turned down. He would like to give Brian the opportunity to rethink the project and bring it back. Brian said even if the tracks were moved to the north side of the barn, there would still be a noise problem. Mrs. Nelson asked if Pam and Jim Johnson were at the next meeting and were not opposed to the project, if that would help ease some of the Board members concerns. Mark does not feel like it would hurt the situation. Steve Furnivall stated it is not just the Johnson's the Board is concerned with; it is whomever lives in the Johnson's house next, should it ever be sold. Mark explained whomever buys the Johnson's home would be aware of the RCV racetrack and hobby shop, prior to buying the home. Casi Cramer questioned if Brian had thought about building the tracks inside the barn. Brian stated he could build the tracks inside, but would that be containing the noise or would it magnify it. Casi explained if the tracks were inside, it may help contain the amount of people and cars. Greg Heller added the races would not be dependent on the weather either. Steve stated some type of ventilation system would probably need to be installed. Discussion followed regarding moving the tracks and tabling the petition. Mark Martens suggested the petition be tabled until next month unless Brian wants the Board to take action now. Brian Nelson stated he would like to have the petition tabled. With that being said, Mark entertained a motion to table the petition.

Dan Walsh moved to table the special exception, Docket #BZA 31-1201, regarding the construction of an RCV (remote control vehicle) repair/shop and track in an AG District located at 1987 W 50 N, Rochester, IN until the next regularly scheduled meeting (February 13, 2002) allowing time to relocate the facility on the property. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Steve Furnivall, and Mark Martens being in favor and no one opposing.

The special exception, Docket #BZA 31-1201, will be heard again on February 13, 2002 at 7:00 P.M. in the Commissioners/Counsel Room located in the Fulton County Office Building.

FULTON COUNTY BOARD OF ZONING APPEALS  
JANUARY 9, 2002

IN RE: PLAN DIRECTOR REPORT

Casi Cramer presented the Board with the year-end report for the Plan Commission Office (see attachment K). Casi asked the Board if they wanted her to continue to put similar actions by the same petitioner all on one application. She explained that the BZA had 29 petitions, but 44 actions. The Board discussed the situation and decided it was under Casi's discretion.

It is duly noted there were no Public Comments or Board Comments presented.

Being no further business to come before the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn the meeting. Steve Furnivall moved to adjourn the January 9, 2002 Board of Zoning Appeals meeting at 10:00 P.M. Dan Walsh seconded the motion. Motion carried as follows: Steve Furnivall, Dan Walsh, Joe Wegner, Debbie Barts, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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Mark Martens, Chairman

ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
FEBRUARY 13, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, FEBRUARY 13, 2002

7:00 P.M.

COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR  
JANUARY 9, 2002

OLD BUSINESS:

*Brian Nelson (31-1201)*

NEW BUSINESS:

*Keith Hoagland (33-0102)*

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS  
FEBRUARY 13, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 13<sup>th</sup> day of February 2002, at 7:00 P.M. in the Commissioners/Council Room at the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:06 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Secretary, Steve Furnivall; and Debbie Barts. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller. It is duly noted that BZA member Joe Wegner was absent from the meeting.

IN RE: MINUTES

JANUARY 9, 2002

Mark Martens called for any additions or corrections to be made to the January 9, 2002 Board of Zoning Appeals minutes. Being none, Steve Furnivall moved to approve the January 9, 2002 Board of Zoning Appeals minutes. Dan Walsh seconded the motion. Motion carried as follows: Steve Furnivall, Dan Walsh, Debbie Barts, and Mark Martens being in favor and no one opposing.

IN RE: OLD BUSINESS

BRIAN NELSON  
SPECIAL EXCEPTION

Brian Nelson, Docket #BZA 31-1201, Special Exception. Since Mr. Nelson failed to appear for the scheduled meeting, Mark Martens entertained a motion to table or dismiss the petition. Dan Walsh moved to table the petition of Brian Nelson, Docket #BZA 31-1201, until the next regularly scheduled meeting. Steve Furnivall seconded the motion. Motion carried as follows: Dan Walsh, Steve Furnivall, Debbie Barts, and Mark Martens being in favor and no one opposing. The Brian Nelson petition, Docket #BZA 31-1201, has been tabled until the regularly scheduled March meeting at 7:00 P.M. in the Commissioners/Council Room at the Fulton County Office Building.

IN RE: NEW BUSINESS

KEITH HOAGLAND  
DEVELOPMENT STANDARD VARIANCE  
2 ACTIONS

Keith Hoagland, Docket #BZA 33-0102A, Development Standard Variance. Keith Hoagland is requesting a development standard variance from the minimum lot width requirement within the Agricultural District (AG). The property is located at 9476 W 250 S, Kewanna, IN 46939, and consists of two and four tenths acres. Mr. Hoagland would like to split his property into two one acre tracts of land, allowing him to sell the existing home and outbuildings. He would then place a second home on the newly created lot. Casi Cramer, Plan Director, presented an overhead picture of the lot (see attachment A). Mr. Hoagland's lot was created prior to zoning and complies with the AG District standards, therefore it is a legal conforming lot. Mr. Hoagland's legal description includes a 33' x 198' slice of property on the east property line which; is also owned by the neighboring property. This is considered an overlap in the plat books. If you omit the overlap, since clear ownership is unknown, the acreage equals approximately 2.25 acres. The lot is odd shaped and has a width of approximately 403 feet on the south property line and approximately 285

FULTON COUNTY BOARD OF ZONING APPEALS  
FEBRUARY 13, 2002

feet of width on the north property line not including the 33 foot overlap. Casi created a proposed split and had the Surveyor's Office calculate the measurements of the split (see attachment B). Casi explained this is the only possible way to split the property so it meets as many standards as possible. With the proposed split the lot has been split into two lots with one being 1.026 acres and the other being 1.224 acres. The north property lines are 100 feet and 185 feet in width, which do not comply with the standards in an AG District. The lot width standard in an AG District is 200 feet. Casi explained the property lies just west of the incorporated limits of Kewanna and is surrounded by other residents and farm fields. Casi stated with this situation, the Board is dealing with their definition of a practical difficulty and how it is determined. Practical difficulty is defined in the ordinance as: A difficulty with regard to one's ability to improve land stemming from regulations of this ordinance. A practical difficulty is not a "hardship", rather it is a situation where the owner could comply with the regulations within this ordinance, but would like a variance from the Development Standards to improve his site in a practical manner. For instance, a person may request a variance from a side yard setback due to a large tree, which is blocking the only location that would meet the Development Standards for a new garage location. Under the Fulton County Zoning Ordinance Article 10, Section 10.12 A c, states the BZA must make one of their findings of fact in writing that agrees with the fact that the strict application of the terms of this ordinance will result in a Practical Difficulty; this situation shall not be self-imposed, nor be based on a perceived reduction of or restriction on economic gain. Based upon the Board's perceived definition of a Practical Difficulty tonight, will continue to be used on future petitions.

Casi said the issues surrounding the approval of the petition were multi-faceted. The Board needs to consider the following issues: 1) Is the shape of the lot legally conforming to the ordinances considered a practical difficulty (or hardship) to the landowner when the owner wishes to split the property and the development standards can not be met; 2) Or is the fact that the lot conforms to the ordinances as is, yet once it is split becomes nonconforming, define the split as a "self-imposed" hardship; 3) How does the Fulton County BZA define a "Practical Difficulty" a) If a practical difficulty means that when there is no possible way for a land owner to split his property and conform to all of the development standards for that district, then a variance of those development standards could be approved. This definition of practical difficulty essentially defines the splitting of property as a "right" of any land owner b) Or is it an equal argument to say that the splitting of property is not a "right" and that the petitioner's use of the property is not limited by the lot existing as one tract versus its existence as two tracts, therefore the nonconformance of the development standards is not a practical difficulty but a self-imposed difficulty; 4) The Plan Commission interpreted (and amended the ordinance to reflect this interpretation in October of 2001) lot width as the distance measured between the side lot lines, the lot width of a property that has irregular boundaries shall be the narrowest distance between side lot lines. The Plan Commission's goal was to limit the ability to create odd shaped lots and slow the proliferation of housing in the AG District. The fact that this interpretation (and written ordinance) does not, and will not in the future, take into consideration all situations is the reason the BZA is allowed by the State's mandated codes to vary from the said ordinances. That being said it is also relevant to comment that the BZA has the ability to define (by precedent) a "practical difficulty" as it pertains to the needs of Fulton County; 5) Should the BZA observe this request from the standpoint that all of the development standards (area, depth, frontage) will be met except the width; 6) Casi sent a hypothetical situation over the Indiana Planning Association's listserv to review how other counties have handled similar issues. It was apparent by the five-day discussion that every BZA has their own interpretation of what constitutes a practical difficulty and whether the splitting of property is a "right". There was no clear consensus on how BZAs predominately handle these types of situations. Casi stated her

FULTON COUNTY BOARD OF ZONING APPEALS  
FEBRUARY 13, 2002

recommendation to the Board, if they approve it, would be to word the motion in a way that states the variance was granted due to the fact Mr. Hoagland has an irregular shaped lot.

Keith Hoagland stated he would like to split the land in order to clean up the property and create a new dwelling. Keith explained this is a way for him to continue with his side business, without spending more money, since it is his property. Keith has spoken to a surveyor about the overlap and once he receives an answer from the Board, he will survey the overlap to determine where the property lines lie.

There was discussion regarding the acreage with and without the overlap. Casi Cramer was under the assumption that with the overlap, the acreage was 2.4 acres due to the information in the plat books. Mr. Hoagland's deed does not list an actual acreage, so they may not have included the overlap in the plat books. Mark Martens stated with his calculations he would guess that the overlap was not included in the total acreage listed within the plat books. Mark Gudas, 9755 W 100 S former owner of the property, stated his deed to the property read that the eastern property line was disputed and never resolved. Mark Martens entertained questions from the Board to either the Plan Director or Mr. Hoagland.

Mark Martens questioned where the division line splitting the property would be located and whether a setback should be created. Casi Cramer replied as far as the house and barn are concerned, the division line is within the setbacks. Mark asked if each lot had to be considered separately, since they would not conform after the split. Casi said it is up to the Board whether they want to handle this situation as one action or two. She explained when originally looking at this situation she included the overlap because in the plat books it showed the dispute as settled, and Mr. Hoagland owning the overlap. Casi pulled deeds on the property to be sure who owned the overlap and found that the situation had not been settled and it shows two people owning the land, creating the overlap. To have this situation settled, a corrective deed would have to be created. Steve Furnivall discussed the situation with a few Plan Commission members and they could not see why the variance would not be granted with the property sitting just outside of the Kewanna city limits. Steve feels if the lot was not an odd shaped lot then the variance would be turned down, but since it is, he is unsure of how to handle the situation. Steve stated the area they are looking at is very close to the Kewanna city limits and there are other residential areas around the same vicinity, so no farm ground would be lost by allowing this variance. Mark Martens is uncomfortable with setting a precedent. Mark questioned if the Board should take this situation and interpret the zoning ordinance as they think it is intended to be interpreted. Greg Heller, BZA Attorney, stated the Board is dealing with the specific facts, more than setting a precedent for future cases. Greg and Casi have discussed the situation and have found items in the ordinance that need to be changed. As far as this case, the Board should look at the specific facts dealing with this particular situation. Mark stated each case should be treated separately on a case-by-case basis. Greg advised the Board to change question 3 on their findings of fact forms to state "in a practical difficulty" instead of "an unnecessary hardship". Greg further advised the Board to not consider the fact that the ordinance states "this situation shall not be self-imposed, nor based on a perceived reduction of or restriction on economic gain" when giving their motion, since it contradicts the definition of a Practical Difficulty. Greg stated this sentence should be listed under the use variance criteria not development standards variance criteria. Greg explained the Plan Commission would be conducting another public hearing to amend the ordinance and this change would be made at that time. Mark Martens asked for any further questions from the Board to the Plan Director or Mr. Hoagland.

FULTON COUNTY BOARD OF ZONING APPEALS  
FEBRUARY 13, 2002

The Board had discussion regarding the split measurements and whether two variances were needed instead of one. Casi Cramer explained if the overlap does not revert back to Mr. Hoagland, than the newly created eastern lot would not equal an acre and would not fit the lot width standard. Without the overlap, one lot would be approximately 1.37 acres and the other approximately .98 acres. If the property was split in this manner, Casi feels that Mr. Hoagland will have problems complying with the setback standards for the new dwelling. The Board discussed whether or not a variance was needed for both lot width and lot area. The Board decided a variance was needed for both lot width and lot area regarding this situation. Being no further questions from the Board, Mark Martens opened the floor for public comments.

Mark Martens asked for anyone in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Mark Gudas stated he did not have a problem with the split, but he voiced concern about not knowing where the eastern property line lies. Keith Hoagland said he was going to find out where the eastern property line was located. Mark asked for any further comments. Being none, he asked those opposing the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, Mark entertained a motion to approve, deny, or table the petition.

Dan Walsh moved to approve the request for a development standard variance, Docket #BZA 33-0102, off of the lot width and lot area standards in the Agricultural District (AG) to split off a piece of the property located at 9476 W 250 S, Kewanna, IN. Greg Heller, BZA Attorney, stated that for recording purposes it would be easier if separate motions were made, one for the lot width standard and one for the lot area standard. Dan Walsh withdrew his motion.

Dan Walsh moved to approve the request for a development standard variance of 115 feet off of the rear lot width standard in an Agricultural District (AG), on Docket #BZA 33-0102A, to split off a piece of the property located at 9476 W 250 S, Kewanna, IN, with the condition that the building setbacks comply with the Fulton County Zoning Ordinance. Debbie Barts seconded the motion.

The Board then proceeded to fill out their findings of fact forms (see attachments labeled C). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Debbie Barts	Yea
Dan Walsh	Yea
Steve Furnivall	Yea
Mark Martens	Yea

The motion to approve the request for a development standard variance of 115 feet off of the rear lot width standard in an Agricultural District (AG), on Docket #BZA 33-0102A, to split off a piece of the property located at 9476 W 250 S, Kewanna, IN, with the condition that the building setbacks comply with the Fulton County Zoning Ordinance passes with four votes in favor and no one opposing.

Mark Martens asked if there was any further information that needed to be discussed regarding the lot area standard variance. Being no further comments from the Plan Director, petitioner, or public Mark entertained a motion to approve, deny, or table the petition.

FULTON COUNTY BOARD OF ZONING APPEALS  
FEBRUARY 13, 2002

Dan Walsh moved to approve the request for a development standard variance off of the lot area standard in an Agricultural District (AG), on Docket #BZA 33-0102B, to split off a piece of the property located at 9476 W 250 S, Kewanna, IN. Steve Furnivall seconded the motion.

The Board then proceeded to fill out their findings of fact forms (see attachments labeled D). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Debbie Barts	Yea
Dan Walsh	Yea
Steve Furnivall	Yea
Mark Martens	Yea

The motion to approve the request for a development standard variance off of the lot area standard in an Agricultural District (AG), on Docket #BZA 33-0102B, to split off a piece of the property located at 9476 W 250 S, Kewanna, IN passes with four votes in favor and no one opposing.

IN RE:           PLAN DIRECTOR REPORT

Casi Cramer reported that the Commissioners appointed Linda Herd as the new Plan Commission member at their last meeting.

Casi presented the Board with an update of permits, violations, and complaints to the Plan Commission Office (see attachment E).

It is duly noted there were no Public Comments given.

IN RE:           BOARD COMMENTS

The Board discussed moving the March 13, 2002 meeting to a later date, because Mark Martens and Debbie Barts would be absent that night. The Board decided to change the meeting to March 14, 2002 at 7:00 P.M. in the Commissioners/Council Room at the Fulton County Office Building. Greg Heller will not be able to attend the meeting on March 14, 2002. The Board decided to go ahead and hold the meeting on March 14, 2002 without the Attorney being present.

Being no further business to come before the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn the meeting. Steve Furnivall moved to adjourn the February 13, 2002 Board of Zoning Appeals meeting at 8:30 P.M. Dan Walsh seconded the motion. Motion carried as follows: Steve Furnivall, Dan Walsh, Debbie Barts, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
FEBRUARY 13, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

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Mark Martens, Chairman

ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
MARCH 14, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

THURSDAY, MARCH 14, 2002

7:00 P.M.

COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR  
FEBRUARY 13, 2002

OLD BUSINESS:

*Brian Nelson (31-1201)*

NEW BUSINESS:

*RTC (34-0102)*

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS  
MARCH 14, 2002

The Fulton County Board of Zoning Appeals met on Thursday the 14<sup>th</sup> day of March 2002, at 7:00 P.M. in the Commissioners/Council Room at the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:02 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; and Debbie Barts. Also in attendance were: Plan Director, Casi Cramer and Administrative Secretary, Erica Ginther. It is duly noted that the following were absent: Secretary, Steve Furnivall; Joe Wegner; and BZA Attorney, Greg Heller.

IN RE: MINUTES

02/13/02

Chairman, Mark Martens, called for any additions or corrections to be made to the February 13, 2002 Board of Zoning Appeals minutes. Being none, Dan Walsh moved to approve the February 13, 2002 Board of Zoning Appeals minutes. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, and Mark Martens being in favor and no one opposing.

IN RE: OLD BUSINESS

BRIAN NELSON  
SPECIAL EXCEPTION

Brian Nelson, Docket #BZA 31-1201, Special Exception. Due to the absence of Mr. Nelson, Mark Martens entertained a motion to table or dismiss the petition. Debbie Barts moved to dismiss Brian Nelson, Docket #BZA 31-1201, Special Exception. Dan Walsh seconded the motion. Motion carried as follows: Debbie Barts, Dan Walsh, and Mark Martens being in favor and no one opposing. In the Rules of Procedure it clearly states: If the petitioner or the petitioner's agent fail to appear at the meeting for which the extension was given without sufficient reason, the petition may be dismissed.

IN RE: NEW BUSINESS

RTC  
SPECIAL EXCEPTION

Rochester Telephone Company (RTC), Docket #BZA 34-0102, Special Exception. RTC is requesting a special exception within the Residential Cluster District (R1) allowing the installation of telephone switching equipment upon an easement measuring 30 feet by 89.4 feet (measured from the Right-of-Way, ROW) equaling six one-hundredths of an acre per survey (.06). The owners of the property are Dale Prochno II, Karen Brenneman and Carl Prochno. The easement will be located off of River Drive in River Wood Acres subdivision; which has a forty-foot (40') ROW (see attachment A). Plan Director, Casi Cramer, recommended that the special exception be granted with the condition that the telephone switching equipment be placed at least five feet (5') off of the ROW.

Mark Martens asked for the petitioner's presentation. Andrew Perkins, representing agent for RTC, stated Rochester Telephone Company has received permission from all of the landowners regarding the placement of this equipment upon their property. Mr. Perkins explained there is minimal, light traffic on River Drive; therefore the switching equipment will not pose a threat to near by

FULTON COUNTY BOARD OF ZONING APPEALS  
MARCH 14, 2002

landowners. The telephone switching equipment will be utilized to improve service to the citizens of Fulton County and does not pose any obvious threat to the community.

Mark Martens asked for any questions by the Board to the staff or petitioner. Dan Walsh questioned whether or not the equipment would be set off the ROW five feet (5'). Bob Haworth, RTC worker, stated it would be farther than five feet (5'), since they like to have enough room for a work truck and equipment to fit on the site. Being no further questions from the Board, Mark asked for those in favor of the petition to rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Being none, he asked for any further comments from the Board or petitioner. Being none, Mark Martens closed the public comments.

With no further discussion from anyone present Mark entertained a motion to approve, deny, or table the petition. Dan Walsh moved to approve the request, for a special exception, on Docket #BZA 34-0102, to place telephone switching equipment on Dale Prochno II, Karen Brenneman, and Carl Prochno's property with a five foot (5') setback from the Right-of-Way. Debbie Barts seconded the motion. Mark Martens then closed the public hearing.

The Board then proceeded to fill out their findings of fact forms (see attachments labeled B). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Debbie Barts	Yea
Dan Walsh	Yea
Mark Martens	Yea

The motion to approve the request, for a special exception, on Docket #BZA 34-0102, to place telephone switching equipment on Dale Prochno II, Karen Brenneman, and Carl Prochno's property with a five foot (5') setback from the Right-of-Way passed with three votes in favor and no one opposing.

IN RE: PLAN DIRECTOR REPORT

Casi Cramer presented the Board with an update of permits, applications, violations, and complaints that have occurred in the Plan Commission Office (see attachment C).

It is duly noted there were no Public Comments given.

IN RE: BOARD COMMENTS

The Board discussed the items on the agenda for the April 10, 2002 Board of Zoning Appeals meeting. Casi Cramer stated there would be no business coming before the Board during the April meeting. The Board then discussed whether or not they needed to meet in April. It was decided

FULTON COUNTY BOARD OF ZONING APPEALS  
MARCH 14, 2002

that there would be no reason for meeting, since there would be no business heard at that time. Dan Walsh moved to cancel the April 10, 2002 Board of Zoning Appeals meeting since there is no business on the agenda. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, and Mark Martens being in favor and no one opposing. It is duly noted there will not be a Board of Zoning Appeals meeting in April. Those members not present will be notified of the meeting cancellation by a letter.

Being no further business to come before the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn. Dan Walsh moved to adjourn the March 14, 2002 Board of Zoning Appeals meeting at 7:17 P.M. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
APRIL 3, 2002  
EXECUTIVE SESSION

FULTON COUNTY BOARD OF  
ZONING APPEALS

EXECUTIVE SESSION

WEDNESDAY, APRIL 3, 2002

7:00 P.M.

COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

SBA INC (05-0301)

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS

APRIL 3, 2002

EXECUTIVE SESSION

The Fulton County Board of Zoning Appeals met on Wednesday the 3<sup>rd</sup> day of April 2002 at 7:00 P.M. in the Commissioners/Council Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:04 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Secretary, Steve Furnivall; Joe Wegner and Gary Sriver. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther and BZA Attorney, Greg Heller. It is duly noted that Debbie Barts was absent.

The Board of Zoning Appeals met according to I.C. 5-14-1.5-6.1 to discuss litigation that is pending.

Pursuant to I.C. 5-14-1.5-6.1 the Board of Zoning Appeals certify that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

Dan Walsh moved to adjourn the executive session at 8:40 P.M. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Steve Furnivall, Gary Sriver and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

**THE FULTON COUNTY BOARD OF  
ZONING APPEALS**

**WILL NOT BE MEETING ON APRIL 10<sup>th</sup>,  
2003**

**AS REGULARLY SCHEDULED**

**DUE TO THERE BEING NO BUSINESS  
TO BE HEARD**

FULTON COUNTY BOARD OF ZONING APPEALS  
APRIL 17, 2002  
EXECUTIVE SESSION

FULTON COUNTY BOARD OF  
ZONING APPEALS

EXECUTIVE SESSION

WEDNESDAY, APRIL 17, 2002

7:00 P.M.

COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

SBA INC (05-0301)

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS

APRIL 17, 2002

EXECUTIVE SESSION

The Fulton County Board of Zoning Appeals met on Wednesday the 17<sup>th</sup> day of April 2002 at 7:00 P.M. in the Commissioners/Council Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:05 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Secretary, Steve Furnivall; Joe Wegner, Debbie Barts and Gary Sriver. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther and BZA Attorney, Greg Heller.

The Board of Zoning Appeals met according to I.C. 5-14-1.5-6.1 to discuss litigation that is pending.

Pursuant to I.C. 5-14-1.5-6.1 the Board of Zoning Appeals certify that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

Steve Furnivall moved to adjourn the executive session at 7:29 P.M. Dan Walsh seconded the motion. Motion carried as follows: Steve Furnivall, Dan Walsh, Joe Wegner, Gary Sriver, Debbie Barts and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
APRIL 17, 2002  
SPECIAL MEETING

**FULTON COUNTY BOARD OF  
ZONING APPEALS**

**SPECIAL MEETING**

**WEDNESDAY, APRIL 17, 2002**

**7:15 P.M.**

**COMMISSIONERS/COUNCIL ROOM**

**CALL TO ORDER**

**SBA INC (05-0301)**

**ADJOURNMENT**

FULTON COUNTY BOARD OF ZONING APPEALS

APRIL 17, 2002

SPECIAL MEETING

The Fulton County Board of Zoning Appeals met on Wednesday the 17<sup>th</sup> day of April 2002 at 7:30 P.M. in the Commissioners/Council Room located in the Fulton County Office Building.

Chairman, Mark Martens, called the meeting to order at 7:30 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Secretary, Steve Furnivall; Joe Wegner, Debbie Barts and Gary Sriver. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther and BZA Attorney, Greg Heller.

The Board of Zoning Appeals met to vote on a proposed settlement regarding the pending litigation filed by SBA Inc. Mark Martens entertained a motion to accept, deny, or table the settlement. Steve Furnivall moved to accept the settlement as outlined in the report given. Dan Walsh seconded the motion. Motion carried as follows: Steve Furnivall, Dan Walsh, Debbie Barts, Joe Wegner and Mark Martens being in favor and no one opposing.

With no further business in front of the Board Mark Martens entertained a motion to adjourn the meeting. Steve Furnivall moved to adjourn the April 17, 2002 Special Meeting at 7:32 P.M. Dan Walsh seconded the motion. Motion carried as follows: Steve Furnivall, Dan Walsh, Debbie Barts, Joe Wegner and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_

Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
MAY 8, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, MAY 8, 2002

7:00 P.M.

COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR:

MARCH 14, 2002

APRIL 3, 2002 EXECUTIVE SESSION

APRIL 17, 2002 EXECUTIVE SESSION

APRIL 17, 2002 SPECIAL MEETING

OLD BUSINESS

NEW BUSINESS:

*Marjorie Rinehart (35-0402)*

*Duane Martin (36-0402)*

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS  
MAY 8, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 8<sup>th</sup> day of May 2002, at 7:00 P.M. in the Commissioners/Council Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:01 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Debbie Barts; and Joe Wegner. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller.

IN RE: MINUTES 03/14/02

Chairman, Mark Martens, called for any additions or corrections to be made to the March 14, 2002 Board of Zoning Appeals minutes. Being none, Dan Walsh moved to approve the March 14, 2002 Board of Zoning Appeals minutes. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, and Mark Martens being in favor and no one opposing.

IN RE: MINUTES 04/03/02  
Executive Session

Mark Martens called for any additions or corrections to be made to the April 3, 2002 Board of Zoning Appeals Executive Session minutes. Being none, Dan Walsh moved to approve the April 3, 2002 Board of Zoning Appeals Executive Session minutes. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, and Mark Martens being in favor and no one opposing.

IN RE: MINUTES 04/17/02  
Executive Session

Mark Martens called for any additions or corrections to be made to the April 17, 2002 Board of Zoning Appeals Executive Session minutes. Being none, Dan Walsh moved to approve the April 17, 2002 Board of Zoning Appeals Executive Session minutes. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, and Mark Martens being in favor and no one opposing.

IN RE: MINUTES 04/17/02  
Special Meeting

Mark Martens called for any additions or corrections to be made to the April 17, 2002 Board of Zoning Appeals Special Meeting minutes. Being none, Dan Walsh moved to approve the April 17, 2002 Board of Zoning Appeals Special Meeting minutes. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
MAY 8, 2002

It is duly noted that there was no Old Business reported.

IN RE: NEW BUSINESS

MARJORIE RINEHART  
SPECIAL EXCEPTION

Marjorie Rinehart, Docket #BZA 35-0402, Special Exception. Mrs. Rinehart is requesting a special exception to allow a Flea Market on her property, which is located in the Agricultural District (AG). Her property is located at 11289 West 800 North and contains approximately thirteen acres. The proposed site is surrounded by farmland. Mrs. Rinehart would like to have the proposed flea market open one weekend each month starting at the end of April until the middle of October. The proposed operating times would be from 8:00 A.M. to 6:00 P.M. or 7:00 P.M. Mrs. Rinehart intends to hire four possible part-time employees to help with general maintenance of the building and ground. These employees would work two to three days a week. An existing 60' x 34' building on the property will be utilized by Mrs. Rinehart and her daughter as a second-hand hardware material store. The proposed property was previously a campground, which contains twenty-five lots to be used by the vendors. Each lot has its own electric and water hook-up, and five of the lots have existing septic. Mrs. Rinehart has made it clear that all of the water, electric, and septic facilities will be discontinued and will not be available for use by the vendors. Bathroom facilities will be available within Mrs. Rinehart's existing building. An existing dump station on the proposed property will only be available for use, if the Indiana State Board of Health gives Mrs. Rinehart permission to put it back into operation. The vendors will be allowed to park their vehicles overnight at the proposed site, but there will be no overnight accommodations allowed for the vendors. Mrs. Rinehart has been explicit about the fact that she does not want to utilize the proposed property as a campground. Mrs. Rinehart has received estimates for both a privacy fence and a chain link fence to surround the flea market area. Her preference is to place a chain link fence, five or six feet in height, around the flea market area. There are two platted subdivisions lying within a quarter of a mile and a third of a mile to the south of the proposed property (see attachment A). The only house with a clear view of the proposed flea market is situated within the northern part of Whispering Pines Subdivision. There are two houses relatively close to Mrs. Rinehart's property, located on the east and north side. The house directly to the east has more than 300 feet of open field between it and the proposed flea market area. There are two houses directly across the street (in Marshall County) to the west that would have a clear view of all the activities, but could be buffered slightly if all flea market activities were held at the rear of the proposed property. Casi Cramer, Plan Director, showed those present a rough sketch created by Mrs. Rinehart and her daughter showing where the proposed entrance and exit would be located, as well as Casi's recommended parking area (see attachment B). The existing drive is currently a slag/rock drive and any drives created would have to be brought up to standard in accordance to the Fulton County Zoning Ordinance. There is currently a woven wire fence around most of the proposed property, some areas being in good condition and some areas not. Mrs. Rinehart has already replaced some areas of the bad fence.

Casi explained her recommendation would be that the Board approve the proposed flea market with the following conditions: 1) The Indiana State Board of Health permit/approval is given prior to the special exception going into effect. 2) A fence is constructed around the area to be utilized by the flea market, including the parking area with a set timeline in which the Board would like to see the fence erected. 3) No outdoor storage of any kind. 4) Operating hours: 8:00 A.M. to 7:00 P.M. or 8:00 A.M. to 6:00 P.M. 5) The only overnight parking/storage allowed is during the weekend that

FULTON COUNTY BOARD OF ZONING APPEALS

MAY 8, 2002

the flea market is open for business. 6) All activities associated with the flea market must remain to the rear of the existing 60' x 34' pole building, existing house, and the existing garage as denoted on the rough sketch. 7) The parking and flea market activities are restricted to the area decided upon by the Board.

Mrs. Rinehart has talked to some of the surrounding neighbors regarding the possibility of allowing a flea market on her property. They had thought it would be a good asset and good use of the property. She said the fence definitely needs to be replaced, but she wanted to hear what the Board's response would be before she spent the money. Mrs. Rinehart intends to put the money made, within one year of operation, back into the property and a surrounding fence. She does not intend to have any facilities available for vendors to stay overnight. Mrs. Rinehart explained when the proposed site was utilized as a campground; she was not happy accommodating campers without contracts. She feels it would be too much of a hassle and added expense to her. Mrs. Rinehart feels Fulton County would benefit from the proposed flea market and second-hand hardware store. She has contacted the original contractor who placed the septic system in the building and took his plan to the Fulton County Health Department, as well as, mailed a copy to the Indiana State Board of Health. Both departments told her that they could not find any records stating that the septic system had ever been installed. Mrs. Rinehart's contractor has stated that he would testify the septic system was installed according to the county regulations and he would tell them how it was installed and where. She is unsure if he has been contacted by either of the departments, but he gave each department his phone number if they had questions or concerns. She explained the bathroom facilities would only contain toilets and sinks.

Mark Martens asked the Board members if they had any questions for Mrs. Rinehart or the Plan Director. Dan Walsh questioned how many parking spaces would be available for the vendors. Mrs. Rinehart stated there would be a limit of 25 parking places available for the vendors. Dan asked how big the vendor lots would be. Ann Musser, Mrs. Rinehart's daughter, said the vendor lots were actually two normal camping lots put together. Mrs. Rinehart explained the lots are wide enough for the vendors to have both their trailer and car placed on the lot. Ann Musser explained they would like to have a second-hand hardware shop in the existing building and there would be no displays set outside of the building. Mark Martens questioned if the water and electricity would be shut off to all of the vendor sites. Casi Cramer said all water and electricity running to the proposed vendor sites would be shut off. Ann Musser explained no vendors would need to have access to those facilities. Joe Wegner asked what kind of items would be sold in the second-hand hardware shop. Ann Musser said it would be comparable to a resale shop, where they take in old furniture or other items and clean them up to sell them again. Mrs. Rinehart and Ann Musser would be the only operators of the second-hand hardware shop. Mrs. Rinehart had intended on having the second-hand hardware shop open at least once a week, from April through October. Debbie Barts questioned how often the flea market would be open during those months. Mrs. Rinehart stated she intended to have the flea market open one weekend a month. Mark Martens asked if Mrs. Rinehart intended to have the second-hand hardware shop open every weekend or every other weekend for the months of April through October. Mrs. Rinehart said she would like to have the shop open every weekend (Friday and Saturday) from April through October. Debbie Barts and Mark Martens both questioned what days the flea market would be open during the months of April through October. Mrs. Rinehart restated that the flea market would be open one weekend a month on Friday, Saturday, and Sunday. Debbie Barts asked if the vendors would be bringing in their trailers on Friday morning or Thursday evening. Mrs. Rinehart would prefer that the vendors arrive on Friday morning and depart Sunday evening. Mark Martens questioned if the vendors would be

FULTON COUNTY BOARD OF ZONING APPEALS  
MAY 8, 2002

allowed to stay on the property Friday and Saturday night. Mrs. Rinehart explained the vendors themselves would not be allowed to stay on the property, but they may leave their trailers overnight. Mrs. Rinehart made it very clear that there would be no overnight accommodations for the vendors, only their trailers. Mark Martens asked Mrs. Rinehart what the hours of operation for the flea market would be. Mrs. Rinehart said the vendors would arrive at 7:00 A.M., the flea market would open at 8:00 A.M. and run until 7:00 P.M. Mark questioned what the second-hand shop's hours would be. Mrs. Rinehart stated they would be the same 8:00 A.M. to 7:00 P.M. Debbie Barts noted that Mrs. Rinehart had said she did not want to fix the fence around the property, until they saw what kind of response they received from the public. Mrs. Rinehart explained she would be using the profits from the flea market and second-hand shop, to repair the fence. She added the fence repairs would be made when they had collected enough money. Mrs. Rinehart has received an estimate on a wooden fence to be placed around the property and it was too expensive. Mrs. Rinehart would prefer to have a chain link fence placed around the proposed site. She further explained that the customer parking area would be separated, by fence, from the vendors. The customer parking lot would be located to the East of the vendor area (see attachment B). Mark Martens questioned if Mrs. Rinehart had spoken to the property owners to the East of the proposed site, about the location of the customer parking lot. Mrs. Rinehart did not personally talk to the owners, but sent a certified letter and notice to them and received no response from them. Mrs. Rinehart further explained that the property owner, across the street to the West, was informed about the location of the customer parking lot and he had no problems with it being placed there as long as the flea market was not open every day. Mark Martens questioned if there was an existing fence on the East property line of the proposed site. Mrs. Rinehart stated an existing cattle fence runs along her East property line. She further stated that the people living in the home to the East are already in the process of erecting a privacy fence around their property. Mrs. Rinehart intends to have the parking areas mowed, indicating where the vehicles should park. Debbie Barts questioned how the customers would know what drive to enter and exit out of the flea market. Mrs. Rinehart said signs would be placed for this purpose. These signs would only be put up during the weekends of operation and taken down during non-operating times. The entrance would be off of 800 North to the East of the existing house. The exit would be extended to the West behind the buildings, leading to 1125 West. Debbie Barts asked if there would be just one unisex restroom facility available for both vendors and customers. Mrs. Rinehart said there are two restroom facilities located in the building, but she needs to have Indiana State Board of Health approval for both facilities. Mrs. Rinehart would prefer that both facilities be made available, rather than just one. Mark Martens questioned approximately how many acres would be used in the existing open field for customer parking. Mrs. Rinehart said there is approximately five acres of open field on the east side of the property, which could be used for customer parking. Mark asked for any further questions from the Board to the petitioner or Plan Director. Being none, he opened the public hearing portion of the petition.

Mark Martens asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Being none, he asked for any additional comments from the public or petitioner. Being none, Mark closed the public comment portion of the petition.

There was Board discussion regarding the placement of a chain link fence around the entire proposed site. Debbie Barts suggested rather than having the vendors and customer parking fenced in together, that they move the fence over to the West and closer to the vendor area; while enclosing the vendors. This would open the customer parking area to the East and the fence running along

FULTON COUNTY BOARD OF ZONING APPEALS

MAY 8, 2002

the East property line, would contain the vehicles. Mrs. Rinehart explained the fence would have to be put up in stages due to the fact that she will have to use the income made from the flea market and second-hand shop to cover the cost of the fence. Mark Martens suggested that the Board allow Mrs. Rinehart to operate the flea market and second-hand shop for one year, without any fencing requirements, and then come back to the Board to discuss further fencing requirements at that time. Dan Walsh voiced concern about vehicles parking along the side of 800 North and 1125 West. Mrs. Rinehart said there is adequate room for everyone to park in their designated customer parking area. Mark Martens suggested that "NO PARKING" signs be posted along 800 North and 1125 West to discourage customers from doing so. Mrs. Rinehart explained once business picked up, they would have people directing vehicles to and from the parking lot area. Mark Martens asked where the customers would park for the second-hand shop when the flea market is not in operation. Mrs. Rinehart said that there would be adequate room around the building for customer parking. Cassi Cramer stated the driveway is large enough for customers to park around the building and still have adequate room to exit off of 1125 West. With there being no further Board discussion, Mark Martens entertained a motion to approve, deny with reasons, or table the petition.

Joe Wegner moved to accept the request for a special exception, Docket #BZA 35-0402, to utilize the existing building and property located at 11289 West 800 North, as a Flea Market/Resale Variety Store in the Agricultural District with the following conditions: 1) The Indiana State Board of Health permit/approval be given prior to the special exception going into effect; 2) No outdoor storage of any kind; 3) Operating hours for both Flea Market and Resale Variety Store: 8:00 A.M. to 7:00 P.M.; 4) The only overnight parking/storage allowed is during the weekend that the Flea Market is open for business; 5) All activities associated with the Flea Market must remain to the rear of the existing 60' x 34' pole building, existing house, and the existing garage; 6) The parking and Flea Market activities are restricted away from the East property line; 7) The fence construction be postponed for one year with a renewal from the Board at that time; 8) "NO PARKING" signs be installed along County roads 800 North and 1125 West; 9) Restroom facilities for both men and women be established; 10) The Resale Variety Store will be open every weekend (Friday and Saturday) in the months of April through October from 8:00 A.M. to 7:00 P.M.; and 11) The Flea Market will be open one weekend (Friday, Saturday, and Sunday) every month in the months of April through October from 8:00 A.M. to 7:00 P.M. Dan Walsh seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled C). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Joe Wegner	Yea
Dan Walsh	Yea
Debbie Barts	Yea
Mark Martens	Yea

The motion to approve the request for a special exception, Docket #BZA 35-0402, to utilize the existing building and property located at 11289 West 800 North, as a Flea Market/Resale Variety Store in the Agricultural District with the following conditions: 1) The Indiana State Board of Health permit/approval be given prior to the special exception going into effect; 2) No outdoor storage of any kind; 3) Operating hours for both Flea Market and Resale Variety Store: 8:00 A.M. to 7:00 P.M.; 4) The only overnight parking/storage allowed is during the weekend that the Flea Market is open for business; 5) All activities associated with the Flea Market must remain to the rear of the existing 60' x 34' pole building, existing house, and the existing garage; 6) The parking and

FULTON COUNTY BOARD OF ZONING APPEALS  
MAY 8, 2002

Flea Market activities are restricted away from the East property line; 7) The fence construction be postponed for one year with a renewal from the Board at that time; 8) "NO PARKING" signs be installed along County roads 800 North and 1125 West; 9) Restroom facilities for both men and women be established; 10) The Resale Variety Store will be open every weekend (Friday and Saturday) in the months of April through October from 8:00 A.M. to 7:00 P.M.; and 11) The Flea Market will be open one weekend (Friday, Saturday, and Sunday) every month in the months of April through October from 8:00 A.M. to 7:00 P.M. passed with four votes in favor and no one opposing.

IN RE: NEW BUSINESS

DUANE MARTIN  
SPECIAL EXCEPTION

Duane Martin, Docket #BZA 36-0402, Special Exception. Mr. Martin is requesting a special exception to build a Mennonite School on a one-acre lot located approximately 1600 feet east of county road 250 East on the south side of county road 700 North (east of Tiosa). The owners of the property in question are Mr. and Mrs. Ivan Martin, whom have signed an owner verification form granting Duane Martin permission to request the special exception (see attachment D). Duane Martin intends to have the one-acre lot split out from Mr. and Mrs. Ivan Martin's land. The proposed site is zoned as an Agricultural District (AG). The land surrounding the proposed site is all agricultural ground. The town of Tiosa is situated approximately a half of a mile to the southwest of the proposed site. The school will have outhouse facilities, which Mr. Martin has received approval from the Indiana State Board of Health for (see attachment E). Mr. Martin has also obtained his Indiana Department of Fire and Building Services permit, which is required of all public buildings prior to construction (see attachment F). The proposed school building will be 45' x 24' and will consist of a one room classroom. The building meets all of the Zoning Ordinance setback requirements for the AG District. There will be a basketball court, ball diamond, and possible playground for the children attending the proposed school. Casi Cramer, Plan Director, said it is her recommendation to approve the request, with the condition that Mr. Martin obtains his permit/approval from the Indiana State Board of Health, which he has done. The Fulton County Health Department will go out to the proposed site to make sure that there is adequate space placed between the outhouses and the playground equipment. The Indiana State Board of Health said the maximum number of children that could attend the proposed school would be approximately 35-40.

Mr. Duane Martin stated there would not be 35-40 children attending the school in the beginning. Mr. Martin expects approximately 12-15 children will be attending the proposed school in the beginning. Mr. Martin explained that the outhouses would be placed at the southwest corner of the proposed property, which is behind the school building near the driveway (see attachment G). Mr. Martin said that there will not be a well at the proposed site, but water will be carried to the school for the children and teacher's use.

Mark Martens entertained questions by the Board members to the petitioner or Plan Director. Joe Wegner asked if a fence was or would be placed around the proposed property. Mr. Martin stated there would eventually be a fence placed around the parameter of the property, but there is none there currently. Dan Walsh questioned whether or not the basketball court and outhouses had to abide by the setbacks. Casi Cramer said the basketball court does not have a required setback, but the outhouses do. Casi explained the outhouses are considered accessory structures, therefore their

FULTON COUNTY BOARD OF ZONING APPEALS

MAY 8, 2002

setback is equal to the height of the structure; if the outhouse is eight foot in height then it has to sit eight feet from the side and rear property lines. Mark Martens asked if the County would place School Crossing signs or children at play signs near the school after it was built. Casi stated she was unsure if it was a County requirement but she thought that the road in front of the Amish school near Mt. Zion had a reduced speed limit and "Slow" signs. Casi suggested that Mr. Martin contact Scott Tilden, Fulton County Highway Superintendent, and ask how to go about getting those signs placed near the facility. Joe Wegner voiced concern about a fence being placed around the perimeter of the property to help keep the children confined. Mr. Martin explained he had not discussed the possibility of a fence to his fellow Board members, but he will, and they will put a fence around the property. Mr. Martin stated there would be a pony barn built near the outhouses and a hitching rail on the west side of the driveway. Dan Walsh questioned whether there was clear visibility to the east from the driveway or not. Mr. Martin said the visibility to the east and west is clear from the driveway. Mr. Martin explained the hill, on which the school building sits, tapers away from the road giving a clear view of traffic coming from either direction. The proposed school building will sit 150 feet off of county road 700 N. Mark Martens asked for any further questions from the Board members to Mr. Martin or Casi Cramer.

Being none, Mark opened the public hearing portion of the petition. Mark asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Being none, he closed the public comment portion of the petition.

Mark Martens asked for any further Board discussion. Being none, he entertained a motion to approve, deny with reasons, or table the petition. Dan Walsh moved to approve the request for a special exception, Docket #BZA 36-0402, to erect a Mennonite School on a one-acre lot located on the south side of 700 North with the condition that a fence be installed along 700 North, in particular, the east side of the driveway, and that School Warning signs be placed near the facility. Debbie Barts seconded the motion.

The Board members proceeded to fill out their Findings of Fact forms (see attachments labeled H). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Debbie Barts	Yea
Dan Walsh	Yea
Joe Wegner	Yea
Mark Martens	Yea

The motion to approve the request for a special exception, Docket #BZA 36-0402, to erect a Mennonite Scholl on a one-acre lot located on the south side of 700 North with the condition that a fence be installed along 700 North, in particular, the east side of the driveway, and that School Warning signs be placed near the facility passed with four votes in favor and no one opposing.

IN RE: PLAN DIRECTOR REPORT

Casi Cramer presented the Board with an update of permits, applications, violations, and complaints that have occurred in the Plan Commission Office (see attachment I).

FULTON COUNTY BOARD OF ZONING APPEALS  
MAY 8, 2002

Steve Furnivall resigned from the Fulton County Advisory Plan Commission Board and the Board of Zoning Appeals Board. The Advisory Plan Commission will be appointing the new BZA member.

The Board of Zoning Appeals officially settled the lawsuit filed against them by SBA, Inc.

Bryan Tam will be in front of the Advisory Plan Commission on Monday, May 13, 2002. The Plan Commission sends their recommendation for the Zone Map Amendment, to the County Commissioners, and it will be heard at their first regularly scheduled June 2002 meeting. If the County Commissioners approve the Zone Map Amendment, the petition will be in front of the BZA at their July 10, 2002 meeting.

It is duly noted there were no Public Comments or Board Comments given.

Being no further business to come before the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn. Joe Wegner moved to adjourn the May 8, 2002 Board of Zoning Appeals meeting at 8:52 P.M. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh, Debbie Barts, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING  
APPEALS

WEDNESDAY, JUNE 12, 2002

7:00 P.M.  
COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES  
FOR:  
MAY 8, 2002

OLD BUSINESS

NEW BUSINESS:  
*Andy Kamp (38-0402)*  
*Martin Ramer (39-0502)*

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

THE FULTON COUNTY BOARD OF ZONING APPEALS  
JUNE 12, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 12<sup>th</sup> day of June 2002 at 7:00 P.M., in the Commissioners/Council Room located in the Fulton County Office Building. Vice Chairman, Dan Walsh, called the meeting to order at 7:00 P.M. The following members were present: Vice Chairman, Dan Walsh; Joe Wegner; and Linda Herd. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller. It is duly noted that Chairman, Mark Martens and member Debbie Barts were absent.

IN RE: MINUTES

05/08/02

Vice Chairman, Dan Walsh, called for any additions or corrections to be made to the May 5, 2002 Board of Zoning Appeals minutes. Being none, Joe Wegner moved to approve the May 5, 2002 Fulton County Board of Zoning Appeals minutes. Linda Herd seconded the motion. Motion carried as follows: Joe Wegner, Linda Herd, and Dan Walsh being in favor and no one opposing.

It is duly noted there was no Old Business reported.

IN RE: NEW BUSINESS

ANDY KAMP  
DEVELOPMENT STANDARDS VARIANCE

Andy Kamp, Docket BZA# 38-0402, Development Standards Variance. Mr. Kamp is requesting a development standards variance of 41 feet for the purpose of constructing a porch on the front of his home (see attachment A). The home is located in an Agricultural District (AG) at 8264 West State Road 14, Kewanna, IN 46939. The property contains approximately 2.14 acres. Mr. and Mrs. Kamp are in the process of restoring Mrs. Kamp's family farmhouse, which is over one hundred years old. The original farmhouse had two smaller porches attached to the front of the home that were torn off.

Casi Cramer, Plan Director, explained after Mr. Kamp had started construction he was informed he needed to obtain a zoning permit. When Mr. Kamp came into the Plan Commission office to obtain his permit Casi realized he would not meet the required front yard setback and would need to ask for a variance. Mr. Kamp also notified Casi at that time that the porch had already been finished. The required front yard setback in the AG District when adjacent to a Primary Arterial Road, State Road 14, is sixty feet (60') off of the right-of-way. The total right-of-way of State Road 14 is sixty feet (60'). Therefore, for Mr. Kamp to be in compliance with the Fulton County Zoning Ordinance he would have to build his porch a total of ninety feet (90') from the center of State Road 14. Casi noted the closest point of the existing home sits a total of approximately fifty-seven feet (57') from the center of State Road 14. The existing garage on the property sits approximately ninety feet (90') from the center of State Road 14. It is the Plan Director's recommendation to approve the development standard variance of forty-one feet (41') for the purpose of constructing a porch on the front of Mr. Kamp's home. Casi noted Mr. Kamp would not be able to comply with the required setbacks anywhere on his property for construction of a porch. There are a number of trees that sit to the side of the porch, which would act as a safety precaution for vehicles on State Road 14.

THE FULTON COUNTY BOARD OF ZONING APPEALS  
JUNE 12, 2002

Dan Walsh asked Mr. Kamp if he had anything to add to the Plan Director's report. Mr. Kamp stated he knew he needed the permit but the crew he hired to build the porch got started and finished sooner than he had expected. Mr. Kamp said he had nothing further to add.

Dan Walsh asked the Board members if they had any questions for Andy Kamp or the Plan Director. Joe Wegner questioned where the old porches were located on the home. Casi drew in the old porches on her diagram (see attachment B). Casi noted that the old porches had been torn down and the existing foundations were taken out. Therefore, it is not possible for Mr. Kamp to use the old existing foundations to create a porch. Dan asked for any further questions from the Board to the petitioner or Plan Director. Being none, he opened the public hearing portion of the petition.

Dan Walsh asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Being none, he asked for any additional comments from the public or petitioner. Being none, Dan closed the public comment portion of the petition.

Dan asked for any further Board discussion. Being none, he entertained a motion to approve, deny, or table the petition. Joe Wegner moved to approve the development standards variance, on Docket BZA# 38-0402 Andy Kamp, of forty-one feet (41') for the purpose of constructing a porch on the front of his home. Linda Herd seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled C). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Joe Wegner	Yea
Linda Herd	Yea
Dan Walsh	Yea

The motion to approve the development standards variance, on Docket BZA# 38-0402 Andy Kamp, of forty-one feet (41') for the purpose of constructing a porch on the front of his home passed with three votes in favor and no one opposing.

IN RE: NEW BUSINESS

MARVIN RAMER  
SPECIAL EXCEPTION

Marvin Ramer, Docket BZA# 39-0502, Special Exception. Mr. Ramer is requesting a special exception to place a sign on Mr. Rick Wyatt and Mr. Gary Wyatt's property (see attachment D for owner verification form). The property is within an Agricultural District (AG) and is located on the east side of State Road 25, across the street from the address 5490 State Road 25, Rochester, IN 46975. There is approximately six (6) acres located at this site. The sign is made up of two panels, which will be in the form of a "V" and will be an advertising and directional sign for Mr. Ramer's business, RAMCO. Each panel is thirty-seven inches (37") in height and one hundred and forty-three inches (143") in length [approximately 3' x 12']. Three posts will stabilize the panels of the sign (see attachment E).

THE FULTON COUNTY BOARD OF ZONING APPEALS  
JUNE 12, 2002

Casi Cramer, Plan Director, explained that the Wyatt's property comes to a point on the south edge adjoining State Road 25. Mr. Ramer would be placing his sign at this particular point. There is also an existing line fence on the property, which runs along State Road 25. Mr. Ramer will have to place his sign at least ten feet (10') off the existing line fence, assuming the line fence is the edge of the right-of-way. Casi noted that State Road 25 north of Rochester is not a federally funded state highway; therefore Mr. Ramer is not required to obtain a state permit. As long as the sign, and its placement, are in compliance with the Fulton County Zoning Ordinance, the sign can be located within the AG District. It is the Plan Director's recommendation that the request for a special exception to place a sign on Mr. Rick Wyatt and Mr. Gary Wyatt's property, for Marvin Ramer's business RAMCO, be approved. Casi noted if approved Mr. Ramer will have to comply with the Fulton County Zoning Ordinance, which states: Any sign greater than thirty-two (32) square feet but not more than one hundred square feet is permitted as a special exception in the AG District. Signs shall be setback a minimum of ten (10) feet from the right-of-way. No illumination is permitted; and obtain a sign permit from the Fulton County Plan Commission Office prior to placing the sign.

Dan Walsh asked Mr. Ramer if he had anything to add to the Plan Director's report. Marvin Ramer stated he had nothing further to add. Dan Walsh asked the Board members if they had any questions for Marvin Ramer or the Plan Director. Joe Wegner questioned what type of business RAMCO is. Casi Cramer stated it is a construction business. Marvin Ramer said he has had his business for approximately three years and his business is a distributor for metal roofing and siding. Marvin noted he also does some construction and upholstery business. Marvin explained his business is not located at this particular site but it was the only place in the county where he was allowed to place it without receiving State approval. Marvin said he would make sure that the sign and the area around the sign was kept clean and tidy because he wants it to look respectful. Linda Herd questioned if Marvin Ramer had to sign a contract with the landowners stating how long he could have his sign on their property or not. Marvin stated he does not have a contract with the Wyatt's. Dan asked for any further questions from the Board to the petitioner or Plan Director. Being none, he opened the public hearing portion of the petition.

Dan Walsh asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Being none, he asked for any additional comments from the public or petitioner. Being none, Dan closed the public comment portion of the petition.

Dan asked for any further Board discussion. Being none, he entertained a motion to approve, deny, or table the petition. Joe Wegner moved to approve the special exception, on Docket BZA # 39-0502 Marvin Ramer, to place a sign on Mr. Rick Wyatt and Mr. Gary Wyatt's property within the Agricultural (AG) District. Linda Herd seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled F). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Linda Herd	Yea
Joe Wegner	Yea
Dan Walsh	Yea

THE FULTON COUNTY BOARD OF ZONING APPEALS  
JUNE 12, 2002

The motion to approve the special exception, on Docket BZA #39-0502 Marvin Ramer, to place a sign on Mr. Rick Wyatt and Mr. Gary Wyatt's property within the Agricultural (AG) District passed with three votes in favor and no one opposing.

IN RE: PLAN DIRECTOR REPORT

Casi Cramer explained that she had added some things to her report and had not finished revising it in time for the meeting. Therefore, she will be finishing her report and mailing them to all of the members along with their packets for next month.

Casi noted that Bryan Tam would be coming in front of the BZA during their meeting on July 10, 2002 asking for a special exception to operate a confined feeding operation. Casi explained that she would be mailing out the Board's packets earlier than usual, so that all the members have time to review the petition before the meeting.

It is duly noted there were no Public Comments or Board Comments given.

Being no further business to come before the Board of Zoning Appeals, Dan Walsh entertained a motion to adjourn. Joe Wegner moved to adjourn the June 12, 2002 Board of Zoning Appeals meeting at 7:31 P.M. Linda Herd seconded the motion. Motion carried as follows: Joe Wegner, Linda Herd, and Dan Walsh being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary



## Fulton County Advisory Plan Commission

125 East 9th Street, Rochester, IN 46975

574.223.7667 • [plandirector@rtcol.com](mailto:plandirector@rtcol.com)

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August 29, 2002

TO: All BZA Members

FR: Erica Ginther  
Administrative Secretary

RE: July 10, 2002 BZA Minutes

We are sending you the revised copy of the July 10, 2002 minutes, which you tabled at your August meeting. The following changes were made:

- pg. 9 Jeff Jancrow was changed to Jeff Eckrote,
- pg. 10 Wayne Bohling was changed to Wayne Bode,
- pg. 13 Wayne Fugate was changed to Frank Fugate,
- pg. 15 "A.J. DePyper said the neighbors' main concern is the issue" was changed to "A.J. DePyper said the neighbors' main concern is not the issue", and
- pg. 16 Joe Wegner's comment about odor was reworded to more accurately reflect his statement at the meeting.

We need everyone to read through these minutes again carefully to ensure there are no other mistakes that should be changed prior to approval. Our office is in the process of typing the transcript of the meeting; once the transcript is finished we will compare it to what was written in the minutes. If we have find any additional mistakes, or things that need to be corrected we will discuss them at your September 11, 2002 meeting. If you have any questions, concerns, or further changes please contact us at (574) 223-7667.

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Mark Martens:** Ok, at this time I'm going to uh... introduce uh... Greg Heller our uh... legal council and uh... he's gonna have a few open comments for the Board and then from there I'm gonna go through our procedure so that everyone is aware of how we will be conducting this meeting and uh... kinda the ground rules that we're going to be following so Greg...

**Greg Heller:** Well normally we don't have quite a crowd like this and I just want to make a few comments for the benefit of the public that's here for the Bryan Tam hearing and I'm assuming that the majority of you are here for that... for that petition and also for the Board but what I want to say is that I think it's important that everybody understands what we're here for and that is the petition for a special exception for this hog confinement operation and in order for the Board to approve that special exception there has to be written findings of fact that satisfy uh... four criteria and the Board will be listening and uh... receiving you know all information and evidence presented here tonight and using that to make their determination for these written findings of fact whether you know it fits this criteria um... and for purposes again of the public you know the four criteria that that there needs to be findings of fact on are, one that the proposed use will not be injurious to the public health, safety, morals, and general welfare of the community, two the proposed use will meet the requirements and development standards prescribed by the Fulton County Zoning Ordinance, three the proposed use will not corrupt the general purposes served by the Fulton County Zoning Ordinance and will not permanently injure other property or uses in the same district and vicinity, and four the proposed use will be consistent with the character of the zone district therein and the Fulton County Comprehensive Plan and for... purposes of the Board's information I would uh... I would remind you that receive all of the information and use that information to fit in to these four criteria when you're filling... filling out your findings of fact because there ne... you do need to satisfy all four of these in order to pass this special exception so hopefully that kinda brings everybody up to speed of what's gonna happen here tonight and how the decision will be reached and the information that we use to reach that that decision

**Unknown:** Can I ask a question if these four conditions are met is the Board required to uh... grant the exception

**Greg Heller:** They're not required to but if they're met I mean it will be granted I mean as so long as there's a majority of the Board that feels that way

**Mark Martens:** Each of those four questions we will... we will respond to each of those four questions separately if any of us would disagree with any one of those four questions than we are obligated to disagree with the entire petition ok so that's kinda how that goes um... and it takes a three it will take three votes in favor for the petition to pass or more uh... and two or less then it would fail our ground rules and I'm Mark Martens uh... this is Linda Herd to my right, to my left is Dan Wash... Walsh

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

excuse me, uh... Debbie Barts and Joe Wegner and uh... Erica Ginther is our Executive Secretary and then Casi Cramer is uh... the uh... Plan Director our uh... procedures that we're going to be conducting our... our meeting today with uh... are the same ones we've been using and that is we'll start with an introduction of the uh... petition by Casi uh... she'll present her case or her material to us uh... for what however long it takes for her to get through that and it's gonna be quite lengthy because there are many details that we're gonna have to go through and be presented uh... and then the petitioner's will have ten minutes to add their... their version or any additions to what has been presented already from there than uh... I'm going to be entertaining a motion from the Board to open up uh... the hearing to um... well excuse me we're gonna have some discussions and if there's any questions that we happen to have as a Board directing... directly to uh... the petitioners' we'll do that what we want some clarification from Casi we'll do that at that time and then I'll entertain a motion from the Board to open up to the public hearing uh... during the public hearing we will go in this order and that is those that are in favor uh... will have a maximum of ten minutes now there with this large number of people I'm sure that there are gonna be many things that are gonna be repeated and uh... that's something we want to avoid so if someone stands up and and their version of why there in favor they state some facts and what have you and that's what we... we want to make sure that we are staying with facts because that's what we have to judge on is facts so if you present those materials for us that'd be great if there's someone else that's in favor we... and by the way we want you to stand give us your name and your address please so we know where you're located and then anyone else if you have additional facts that's fine but if you don't have any additional facts but you want to be heard certainly we'd encourage you to stand up and say yes you're in favor once that has taken care of then we'll go to those persons that are opposing and again the same kind of criteria if you have facts that pertain to this case that... that you want to present as to why you oppose that's fine uh... we encourage that uh... and if someone else does that's fine too but if you have additional information we'd want to hear that but if it's the same information we will have already heard it ah... but if you want to say yes I'm opposed then certainly we'll want to hear that... hear that you're opposed but we want to give 'em a chance to... to at least give us that but we don't want to have a lot of redundancy in our meeting tonight I think that's gonna be wasteful on everyone's part as far as time is concerned after that then uh... the Tams' will have an opportunity to rebut uh... anything or add anything and they'll have ten minutes to do that at that point in time uh... we will... I'll entertain a motion from the Board to close the public session and at the time the public hearing is closed will be closed and that will have been you're opportunity to participate from there on it's gonna fall on our shoulders up here uh... we will have discussion uh... it won't be whispers because we'll be speaking out loud we want to make sure everyone understands our... our discussion uh... at the end... at the end of our discussion then we'll entertain a motion to approve or reject or table the motion and uh... at that time we will uh... have a motion to close our public hearing and at that time we will be writing our findings of fact uh... that's the time where we... we actually will write down our findings once we've finished the written portion then

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

uh... I will ask for Erica to give a roll uh... a counting of our... of our voting and she has a set order that she goes by uh... and as Chair I get to go last every time so and at that point in time it'll be approved or disapproved so that's pretty much our... procedure for tonight so we appreciate everyone being here and uh... Casi I'm gonna turn it over to you this is the Bryan Tam petition 37-0402 and we're gonna need to make a hole over here so Casi can make her presentation

**Dan Walsh:** There's some seats up here

**Mark Martens:** We have three seats four seats up here I see five seats up here

**Casi Cramer:** **(Inaudible)** um... the petition before us is Bryan Tam he is requesting a special exception for a confined feeding operation in um... in the Intensive Use District the confined feeding operation would be um... an eight-thousand head facility and I have two four-thousand head um... hog barns located on the site the blue square you see here is the IU District the County Commissioners approved the Zone Map Amendment for the IU District and once the BZA's decision is made um... if it is a positive decision then the commitments that the Commissioners required the Tam's to place on this district will be recorded and the amendment will be effective right now the amendment is not effective they have three months to record those commitments before um... that amendment actually takes place so under my suggestion I asked them to wait if the decision tonight is negative the and they don't record the commitments it... this property will revert it... it will not... it basically the... the zone map amendment will not take place so it will go back to an AG District or it will be an AG District um... and I just wanna make sure that's... that's clear cut um... for the purposes tonight of firstly in the IU District the Intensive Use District does not have any permitted uses in them the only uses in a IU District are special exceptions and um... therefore they needed to go before you **(inaudible)** from the map I have the Industrial District this is um... the incorporated limits of the town of Fulton all the blue areas you see are industrial the red is a General Commercial area and the highlighted yellow would be what we call the Residential Cluster sections and the green is a park area **(inaudible)** sorry um... the black square is again the IU District and what this represents is a one mile radius around it the green x's would be the homes in the immediate vicinity of that the blue line corresponds to the study that you all received in the mail by Purdue University and um... basically this was drawn out by Don Towne the County Surveyor so you don't have to worry about my math when it comes to putting this to scale um... if you have any questions Don is here so you can just ask him but uh... I just put it up there for reference in case anybody wanted to talk about it **(inaudible)** particular just information you see the large view you can see a little bit better uh... the IU District is situated between 250 West and 300 West just south of 600 South uh... State Road 114 is down here and that's **(inaudible)** State Road 114 right down here you have Mill Creek that runs about a half mile south of the IU District and the district is approximately seven acres uh... in size the as I stated um... this operation would be a finishing house and it would receive the hogs approximately forty pounds

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

of weight and ship 'em out at two-hundred and fifty pounds the operation has the capacity of having what's called three full turns so they'd have um... eight-thousand hogs come in grow to weight ship 'em out eight-thousand more come in **(inaudible)** they can do that three full times but the industry standard is actually more like two, two and a half turns a year um... each finishing building will have a concrete manure pit beneath it and the engineering design show that the manure pit can hold three-hundred and forty-eight days of manure again industry standards actually show that this is more like fourteen months worth of stan... storage space due to the fact that the technology in the watering the way that the animals are watered and obtain their water um... has improved so there's not many waste an... and wasted water that... that would be going into the pit the manure will be pumped once a year from the pit and injected into the application ground and this would be done late fall early winter um... during and it would be injected during all times possible I'll get to the commitments by the Commissioners in a second but that is a commitment that the Commissioners placed on Mr. Tam is that uh... except for emergency situations the manure would have to be injected in the application ground the application ground with the amount of manure that will be generated from the building the application ground required by IDEM um... for Mr. Tam to have is four-hundred and seventy-one acres that number is derived from um... agronomic rates which basically means that the measurement in the content from the manure that which ever animal creates and whatever crops your raising on the ground then they compare it in type of equation the agronomic rates used in the industry are pretty standard and Mr. Tam actually has eight-hundred and ninety acres of applicab... applicable ground that he can spread on so they're um... either either owned by Mr. Tam or under um... a contract by Mr. Tam and um... whomever owns it so that he can spread on it if need be by IDEM regulations **(inaudible)** this is all of the application areas that Mr. Tam has under contract um... again there's eight... approximately eight-hundred and ninety acres within all of these shaded areas um... Mr. Tam by IDEM regulations has to stay at least five foot from all drainage inlets, fifty feet from wells and twenty-five feet from surface water uh... there are no application setbacks if injecting the public road and property line if once a year or actually ever two years at the very minimum composite soil samples have to be taken from each field used for the manure application um... it has to be collected and analyzed and it will be sent to a private analytical laboratory it's analyzed for nitrogen, phosphorous, potassium, and pH and again those will be collected and analyzed at least every two years um... Mr. Tam will also by IDEM's regulations would have to have a composite sample from each of the below building manure pits um... prior to injecting um... they would be uh... the normal sample turn pumping would be five to ten from the concrete manure pit and again it's sent to a private laboratory for analysis and it's analyzed for nitrogen, phosphorous, potassium, moisture content, and pH and um... again those would be collected annually there will be one prior to injecting the manure sample will be taken this is a site plan of the actual um... proposed facility the zoning ordinances require a buffer yard be set for anything in the IU District and you see on the sides um... we have a fifty foot side... side yard setback and that's plus the additional ten foot required for the buffer yard within the buffer yard Mr. Tam

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

would be required to plant um... a coniferous type of coniferous tree um... every twenty feet they uh... all have to be planted within five to fifteen feet of the property line which actually in this situation we're not dealing with property lines we're dealing with the IU District so this square represents the approximately seven acres um... the seven acres that was rezoned to IU is um... is what you see here there's definitely no room for expansion on the seven acres that is an IU District if Mr. Tam every wanted to expand um... he would have to go through the entire process again have more ground rezoned to IU and um... and actually in conjunction with that the Plan Commission has a proposed amendment that they will be voting on in either September or October that would um... it would require a maximum of thirty-six hundred units on any property for any type of confined feeding operation so Mr. Tam for example if his is approved will be sitting at thirty-two hundred units um... that's eight thousand head of hogs um... thirty-six hundred units is uh... nine thousand so the expansion really there's uh... he wouldn't be expanding that much I don't even know if it's feasible at this location IDEM's regulations um... the buildings and the manure has to be at least one-hundred feet away from the well uh... you can see the on site well and electric here this is the driveway that goes around there'll be two hundred and five feet between the buildings there's also a sixty foot setback on the rear property or rear IU District line and um... a hundred and fifty feet front setback again that goes from the IU District not the property line the property Mr. Tam owns at this location is approximately a hundred and fifty eight acres so in... I want to stress that the setbacks I took from the actual IU District um... the proposed operation would sit approximately a thousand feet off of county road 300 West and sixty feet off of the side again the sides and the rear of the IU District um... according to Mr. Tam's I... IDEM application the buildings will be back filled and grated to divert the run-off from pastures and cropland away from the actual facility and building the building um... if this is approved the building would sit on what's called a Markton soil type this soil type has a seasonal water table from anywhere between one and three feet below the surface um... Mr. Tam has stated that if this is approved there will be a perimeter tile that will run around the actual facility to keep um... the pressure of that water table off of the pressure of the way the land sits so they don't... they don't have unequal pressure the waste management system also has to not only from just the well but it has to sit a hundred feet from the property line and the public road again the public road it... it would be approximately a thousand feet away but it would sit approximately sixty feet um... within sixty feet of um... Sherald Tam's property line and you should have gotten in your packet a letter from Sherald Tam stating that um... he gives Bryan a waiver from having to fit that setback that's an IDEM setback and that letter was sent to IDEM and uh... it's been taken care of through the state **(inaudible)** this is kind of a... a rough overview of what I just showed you um... this however is 300 West this is the drive that would go back to the actual facility the green is the IU District this building here is the proposed area where the mortality building will sit it's not to scale this is the approximate area it would sit somewhere in between here um... basically it will sit beyond the crest of a hill this drive um... it's actually farmland right now **(inaudible)** the drive to the fields right now but um... there's a big hill

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

there and over the... the crest of that hill the mort... mortality building would sit right there um... it would be this is the proposed location of that building for a few reasons one is that it's not visible from 300 West um... it's... and it's also would be far enough away from the facility that that mor... the truck needing to pick them up would not have to come into the facility and the other animals possibly spreading disease so um... that would be to address all of the potential health hazards the building would be um... enclosed with some type of screening and or um... tarp board and would have a door that actually latches so that no wild animal that's in connection would get in there um... it's my understanding that this type of truck basically when they have death they call the truck it comes out it picks them up it's not an everyday service or a once a week type thing if uh... Bryan calls and request you can see by this picture to the east or... to the west side the west side of the facility this is a stand of trees um... and again it's required to have buffer plantings of trees all around the facility within possibly two to three years you might not even be able to see the building because of the buffer yards that are around all sides you also received in your packet a letter from um... TDM Farms that stated that they would use State Road 114 and come north on 300 West to access the facility this is uh... by Mr. Tam's request so that it keeps the traffic off of um... county roads 250 West and 600 North or... South you know I don't know how many times I've done that South um... **(inaudible)** um... there would be approximately sixteen thousand and twenty-four thousand head uh... transported in and out of this facility raised and transported out of the year that equal's to about ninety-six to a hundred and forty-four loads of an... animals coming and going from this facility you would also estimate a hundred and eighty-seven to a hundred and eighty semi-trailer loads of feed um... in and out of this facility the width would be um... three to five loads **(inaudible)** the animals will come in in groups when they're younger forty pounds there might be a thousand head in a truck they bring it in depending on and of course the **(inaudible)** truck so again Mill Creek sits approximately a half mile from the proposed facility and this is again that shows the green is uh... private tile that runs close to the facility um... that ties into Mill Creek and lies within a hundred and fifteen feet and two-hundred and fifty-five feet um... south of that facility there are two sub-surface drainage tile intakes that lie between two-hundred and fifty-five and two-hundred and eighty-five feet from the proposed facility and I'm looking at both of those blue dots here and here this is a map of um... the surrounding homes around the proposed facility these are measurements in um... miles away from this proposed facility as you can see um... there's four houses within .26 and point uh... twenty-eight hundredths of a mile uh... one of which belongs to Mr. Tam's parents, two residents are between .35 and .36, two residences between .45 and .46, there's eight um... lying between .45 and .86 and then the remaining seven are between a mile and um... a mile and a third **(inaudible)** down to the south and the west from the proposed facility the as I stated before the Commissioners um... the Plan Commission recommended commitments to the Commissioners as far as um... the actual IU District commitments placed on a district follow the land not the owner so whomever if Mr. Tam ever sold this facility to anybody the same commitments apply to anybody on that land um... using this IU District for whatever purpose actually it

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

wouldn't have to be this type of facility but those commitments for improvement needed to the road if any can be set by the County Commissioners all semi-traffic needed for the operation has to utilize State Road 114 and County Road 300 West except during emergency situations, the two field risers um... that sit approximately two-hundred feet to the south of the district will be plugged when pumping the manure pit um... those were on you see this map the two dots that I just showed you guys a minute ago there is an existing shallow well on the property that um... the third party review revealed when um... it came back to the Plan Commission and one of the commitments is that that existing shallow well has to be sealed, all manure will be injected except during emergency situations uh... the Plan Commission has access to all IDEM required records that are contained on site, soil tests of the application areas **(inaudible)** will be completed every two years and the manure tested at least once a year prior to injection, the stand of trees just located to the west of the IU District is to be left undisturbed except for normal logging practices approved by a qualified Forrester um... I also want to add that in the buffer regulations for a buffer that um... one of the regulations is the fact that all the trees uh... have at least one and a half inch tile dirt they have to be properly maintained and replaced if the tree dies is diseased or damaged by natural causes so the buffers um... are not something that can be planted die during a dry year then never see again um... they have to maintain them and the growth and lastly a third party review must be completed on any new spreading fields equaling a change of twenty-five percent within a five year period from the original IDEM man... Manure Management Plan the operator may not spread on ground more than two years in a row if it was not included in that management plan and the operator has to notify the Plan Commission Office whenever they change spreading fields um... again once these commitments are recorded the IU District will be um... effective a legal district are you all familiar with the third party review or do you want me to go through it

**Mark Martens:** **(inaudible)**

**Casi Cramer:** Ok um... if approved I would recommend to the BZA that they place commitments on the special exception that states Mr. and Mrs. Bryan Tam exclusively hold the special exception uh... to own and operate the confined feeding operation containing um... more than twelve hundred units of hogs within the above stated IU District and also that no more than eight thousand head are reared within the above stated IU District at a time again this facility only hords... holds four thousand head a piece and there's no room on the IU District for any type of expansion um... but that would be just an added **(inaudible)** any questions

**Mark Martens:** Not at this time

**Casi Cramer:** Do you want me to leave this up or...

**Mark Martens:** I don't know Mr. Tam

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

- Bryan Tam:** No
- Mark Martens:** Ok thank you Casi
- Dan Walsh:** Mark you might wanna just leave that right there if we can have some questions in a moment
- Mark Martens:** Thank you. Mr. Tam anything you'd like to add or what have you at this time
- Bryan Tam:** Yeah um... I would like to add that um... I... we start... Julia and I started this project um... in October of 2000 and uh... I just want to make sure everybody understands that I really think that we have uh... did a... a good job of turning over every stone and addressing every issue and trying to understand our neighbors and... and everybody's um... issue with this whole um... project and um... we'll try work... Julia and I work very well with the... the Commissioners and everyone the BZ... or the Plan Commission and the Commissioners too um... to get where I'm... where we're at right now
- Mark Martens:** Ok Board any questions that you have for uh... the Tam's or Casi at this time
- Joe Wegner:** I have a... well Casi when you were talking about the buildings and talking about grading away um... for uh... containment would you please clarify that again
- Casi Cramer:** It's my understanding that um... like the entire pit will not be underground an... it will all be underground ok then no I don't know Mike... Mike is Bryan's engineer so he could explain it better
- Joe Wegner:** Mike
- Mike Veenhuizen:** Like they've said that... I'm Mike Veenhuizen um... and do you want my address
- Mark Martens:** Not yet
- Mike Veenhuizen:** Ok
- Mark Martens:** You're... you're the contractor that's not we're talking about for those in the public portion
- Mike Veenhuizen:** Um... the... the grading and the uh... that was referred to in the proposed uh... IDEM application is to direct any uncontaminated surface water, rainfall drainage away from the waste treatment control structure the below building concrete tank such that there is no contact between that rainfall run-off and any of the processed waste water or there is no excess water getting into the storage structure which

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

would then cause the volume in the tank situation and that would change the balance of the... the application

**Casi Cramer:** So basically they're **(inaudible)** ground **(inaudible)**

**Mike Veenhuizen:** **(inaudible)**

**Joe Wegner:** You gonna have dykes going out of it for containment...

**Mike Veenhuizen:** Sorry

**Joe Wegner:** You gonna have dykes around it to... to uh... force containment going in a direction

**Mike Veenhuizen:** Um... I... we don't believe that the dykes are necessary because we're not collecting or containing uh... any types of contaminated rain

**Joe Wegner:** Uh... one other thing Casi talked about the number of loads that uh... feed and hogs and um... that was for eight thousand head or for the year

**Casi Cramer:** That was a range it was for the year and it was a range on them um... like the size a total of approximately sixteen thousand and twenty-four thousand head could be transported in to that facility per year and that would require between ninety-six and a hundred and forty-four loads um... in my report I just want to say assuming one semi load has a thousand head at forty pounds each one outgoing has two hundred head at two hundred and sixty pounds each and then the feed is the same way hundred and eighty-seven and two hundred and eighty um... that'd be a year so about three to five loads per week

**Joe Wegner:** I might have a question or two but does someone else want to ask

**Dan Walsh:** Yes, I'd like to ask Mike a... another question about the depth of the pits I think I read some place in this presentation that was given to us that if you take the land which leveled out are you gonna be about four foot and then you're gonna put that spill and mounting that up against the wall the uh... pits is that correct

**Mike Veenhuizen:** That's correct Dan you generally a four to five foot excavation and that **(inaudible)** or spill would then be used to back fill to raise the whole buildings end up above the **(inaudible)** earth

**Dan Walsh:** Ok I was just gonna say that... that's what you meant isn't Casi

**Casi Cramer:** That's what I meant when I said the whole thing wasn't underground

**Mark Martens:** Tell me about the fans in the uh... in each room how many fans will there be in each... in each hog room each house has four hog rooms

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Mike Veenhuizen:** Each... each building has four rooms and each... each which is basically setup in a... qua... in a um... quadrant um... two rooms on each end side by side and there would be fans on each end of the building um... not along the lon... the long side of the buildings

**Mark Martens:** Right

**Mike Veenhuizen:** It would be in the eighty foot ends and then would uh... encompass about five fans in each room

**Mark Martens:** In each room

**Mike Veenhuizen:** That'd be about ten fans on each end

**Mark Martens:** What's the diameter of those fans

**Mike Veenhuizen:** They'll vary from by uh... the smaller fans will may be twenty-fours uh... actually I've miss spoke there will be pit... pit fans on the sides and those would be typically twenty-four inch diameter fans the wall fans will vary from twenty-four to forty-eight and that's basically to get us the phase or step ventilation requirements we need between cold weather and hot weather

**Mark Martens:** So two foot to four foot

**Mike Veenhuizen:** Correct

**Mark Martens:** Diameter

**Mike Veenhuizen:** Correct

**Mark Martens:** And there would be than ten on each end

**Mike Veenhuizen:** There will be roughly ten on each end

**Mark Martens:** So we have twenty fans pointing north and twenty fans pointing south

**Mike Veenhuizen:** Yes sir

**Mark Martens:** Ok and how many in... in the manure pits are blowing out then did you say those were two foot fans

**Mike Veenhuizen:** Those would be eighteen inch to twenty-four inch fans depending on how they size it so uh... and I believe those **(inaudible)** well I can confirm that this building design I believe has three per room so that would be six um...

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002  
BRYAN TAM, DOCKET #BZA 37-0402

- Mark Martens:** Six per side
- Mike Veenhuizen:** Six per side yes six per side
- Mark Martens:** Ok
- Mike Veenhuizen:** And those would be at ground level essentially those on the side would be at ground level
- Mark Martens:** And then for the surrounding ground the original ground about how high up would the fans be then from the original lay of the land on the ends of the buildings
- Mike Veenhuizen:** On the ends of the buildings
- Mark Martens:** Uh huh
- Mike Veenhuizen:** Those fans will be about well they'll be about two feet bottom uh... will be to those fans will be about two feet higher than the new grade and if we back fill three to four feet they would be roughly five to six feet above **(inaudible)**
- Mark Martens:** About six feet above so that would put the manure fans than
- Mike Veenhuizen:** They would be roughly at three feet above the...
- Mark Martens:** Three to four feet above
- Mike Veenhuizen:** Above the existing grade
- Mark Martens:** Existing grade
- Mike Veenhuizen:** The original grade
- Mark Martens:** Right... right and I understand that's gonna be **(inaudible)** ok tell me about the mortality building wha... what describe that for me would ya **(inaudible)** enclosed building does it have solid sides is it a fencing kind of a deal or...
- Bryan Tam:** It'll be screened in screened in fencing
- Mark Martens:** Ok... ok what are you... what are you proposing the diameters of that or dimensions of that to be
- Bryan Tam:** Uh... ten by ten

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

- Mark Martens:** Ten by ten ok is uh... are you gonna be the owner of the hogs or will the... or will TDM be
- Bryan Tam:** TDM will own the hogs
- Mark Martens:** Do you... are you purchasing the feed or do they purchase it
- Bryan Tam:** They purchase the feed
- Mark Martens:** Do... is there a representative from there from them here tonight
- Bryan Tam:** Yes Jim Erickson
- Mark Martens:** Mr. Erickson
- Jim Erickson:** Yes sir
- Mark Martens:** Where do you intend to buy the feed for the hogs
- Jim Erickson:** It'll come from one of the two places we have a our company owns a mill in Flora Indiana
- Mark Martens:** Mmm Hmm
- Jim Erickson:** It used to be the old Yeager Saw and Mill that we purchased eleven years ago two years ago and feed come from there and um... but we use some tow millers like a... a over in Portland Indiana there's a company over there that makes feed for us um... Macy Elevator makes feed for us so it's kinda undetermined yet right now but uh... exactly where it's gonna be it's where we can get the best price
- Mark Martens:** Ok thank you
- Dan Walsh:** Like to go back I'd like to go back to the fan question there's gonna be ten in each room
- Mike Veenhuizen:** There'll be... there'll be ten... there'll be ten on each end of the building there will be five in each room
- Dan Walsh:** So there'd be ten pointing each way rather than twenty
- Mark Martens:** No there'll be twenty each way cause you got two buildings
- Mike Veenhuizen:** There's two buildings **(inaudible)** two buildings
- Mark Martens:** Any other questions board

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

- Joe Wegner:** Yes um... the question that uh... that you brought up about who owns the hogs and uh... who owns the building it's an interesting one because it seems to me that uh... the Tam's are just supervising the operation is that really what it is
- Bryan Tam:** We own
- Joe Wegner:** I mean if it's on your ground I guess
- Bryan Tam:** We own the building and uh... manage the building
- Joe Wegner:** You own the building and you manage the building do you have any input in where the feed or anything comes from
- Bryan Tam:** No sir
- Joe Wegner:** What happens if you want to get out of this business and everything is you know maybe not going as well as you think it'll go uh... do you have the right to close it down
- Bryan Tam:** Yes because it's... it's our building
- Joe Wegner:** One of the things that had uh... been somewhat of a concern and I see it every place that you know you read correspondence or you hear things uh... or read things in the paper which is about the pollution aspect of uh... the operation and I know you have a well there has any thought ever been given to using that well as a monitoring well for pollution maybe I should be asking the engineer here
- Bryan Tam:** No um... one thing uh... not the well itself but um... and this is not required by anyone um... my wife and I talked about it we're going to be pulling samples out of the... the observation um... tile that... that the tile goes around the barns we're gonna be pulling samples out of that and having those checked just um... for our own satisfaction because we are gonna be the closest ones living there an... and the pollution is a major concern of um... my wife and I and our family
- Joe Wegner:** How far under the uh... ground is this tile arrangement gonna be
- Bryan Tam:** It'll be at the bottom of... of the uh... the pits along the edges of them so if there's any leakage from the pit or anything like that it... it'll show up in the uh... tile first
- Mark Martens:** Great idea now that tile sits equal to the bottom level of the of the pit
- Bryan Tam:** Yes
- Mark Martens:** It's not gonna... it's not gonna sit below the below that

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

- Mike Veenhuizen:** Well the recommendation is that the tile be placed within two to four feet of the exterior wall and within one foot of the floor elevations so it could vary I mean it does...
- Mark Martens:** It could be a foot above or it could be... it could be a foot below
- Mike Veenhuizen:** It could be equal to or a foot below the floor elevation it'll be mended with a drainable material so that it allows you know actual drainage to occur
- Joe Wegner:** These readings that you're gonna take are these going to be public information that you're gonna share with anybody
- Bryan Tam:** They'll be records of mine they'll be in... in my files it's not required by IDEM
- Joe Wegner:** So you would know the information but maybe your neighbors wouldn't
- Bryan Tam:** Yes like I said we live the closest to it so it's gonna be a major concern of ours cause we got eight thousand head of hogs being drinking out of that water too
- Mark Martens:** You live there with your father
- Bryan Tam:** Currently we are renting uh... outside of Fulton um... we were planning on uh... breaking ground for a home on the north side of that the woods that uh... Casi has up there on 300
- Mark Martens:** The reason I ask is cause I... I thought I had a letter from you that had the same address as your father
- Bryan Tam:** Yes at one time when we moved back from Gordon that is correct
- Mark Martens:** Ok thank you Casi would you put that radar chart back up please who made that copy for you again
- Casi Cramer:** Don
- Mark Martens:** Don is Don here
- Casi Cramer:** He's out in
- Erica Ginther:** He's right out here he's coming
- Mark Martens:** Hi Don when you were making that radar chart when you were looking at the... at the information did you... you looked at the Purdue chart radar graph
- Don Towne:** I... I blew the Purdue chart up to a scale that I had a aerial I could lay it on

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002  
BRYAN TAM, DOCKET #BZA 37-0402

- Mark Martens:** Did you look at the data that that came from
- Don Towne:** Mmm Hmm
- Mark Martens:** What were your thoughts when you were looking at that graph that chart did it seem to match what your expectations of based upon the data
- Don Towne:** Actually it looked kinda backwards to me but uh... that's **(inaudible)**
- Mark Martens:** That's what I thought too
- Don Towne:** **(inaudible)**
- Mark Martens:** Did you have... I had it flipped actually just the other way
- Don Towne:** You would think so but they had a north arrow on their map
- Mark Martens:** They did
- Don Towne:** Yeah
- Mark Martens:** I was just looking at that I... in my mind based upon that information
- Don Towne:** You... you would think but I just did what they did
- Mark Martens:** Yeah I... I looked at that cause I asked Casi... I asked Casi about that I... I just want to get what your thoughts were on that to
- Don Towne:** Yeah
- Mark Martens:** It... it... it seems backwards to me
- Don Towne:** It would seem so but
- Mark Martens:** But I'm not a I'm not a wind expert but
- Don Towne:** I didn't question... I
- Mark Martens:** I'm thinking the wind is blowing more southwest and when I look at the... the table that came from uh... forty-two percent of the time the wind has a west connection to it so I'm thinking it seem to be elongated south and some what back to the west so I... I wanted your opinion on that cause that just didn't seem to match with what I see in that data what that blue cir... what that blue rectangle is supposed to represent is where the wind flow would be uh... going supposedly but

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

- Unknown:** Yeah that ain't right
- Mark Martens:** It doesn't look right to me but that's ok alright any other questions board
- Dan Walsh:** Um... liked to clarify on... on that the reporting um... I think somewhere in here I saw where that the records like your... your monitoring of the uh... observation tile and that stuff would be open to the Planning Commission or the Commissioners or somebody is that correct
- Bryan Tam:** You mean my IDEM records um... they will be available for the Commissioners
- Dan Walsh:** The observation tile
- Bryan Tam:** Come to my property look at my records I open my book to them
- Mark Martens:** You can always make that **(inaudible)**
- Dan Walsh:** I think it already is is what I'm
- Bryan Tam:** No it isn't
- Casi Cramer:** It isn't
- Mark Martens:** In with the drain... the drain tile around the buildings
- Casi Cramer:** Just the IDEM required tests
- Bryan Tam:** Right
- Mark Martens:** Cause I thought... I thought I'd heard you say you were going to monitor the
- Bryan Tam:** That's something that my wife and I are doing on our own
- Mark Martens:** But that's something if we so choose we could... we could have that
- Dan Walsh:** Basically they would be in his files for... for IDEM
- Mark Martens:** But not that he said that was going to be personal anything else Joe anything else Debbie
- Debbie Barts:** No
- Mark Martens:** Dan
- Dan Walsh:** No I don't

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Mark Martens:** Linda

**Linda Herd:** No

**Mark Martens:** Ok I don't see any other questions then at this time I'll entertain a uh... motion to open uh... open things up to the public hearing

**Joe Wegner:** So moved

**Dan Walsh:** Second

**Mark Martens:** Discussion those in favor ok where at the point now where we will at this time uh... entertain persons that are in favor uh... I do ask that uh... you identify yourself with name and address please so that we can have record of that and uh... again we want to work on avoiding redundancies so uh... those that are in favor uh... if you'd be kind enough to again we'll just I'll recognize you as kind of a as I see it first come first serve and uh... if you have new information I would certainly welcome that uh... but if it's something that has already been verbalized uh... then all you need to do is identify yourself as being in favor and that would be fine so at this time I'll entertain uh... public comments uh... in favor of this petition

**Dan Walsh:** You might want to explain the time thing to them

**Mark Martens:** Oh well any one person would have a maximum of ten minutes ok and Dan's my gonna be my timer I've asked him to be the timer to make sure we keep things flowing so that uh... again we want to avoid uh... redundancy and I... I do have the option to if I if it sounds like it's the same thing we've heard before uh... I'll tell you right up front I'm not trying to be rude but we're just trying to protect uh... the time commitment of all those involved and I may cut you off and uh... nothing personal uh... but uh... we do want to have make sure that everyone has an opportunity to at least voice themselves for being in favor at this time so I'll open it up to the public at this time yes

**Dave Sommers:** Dave Sommers Kewanna Indiana (end of side A tape 1)

(Beginning of side B tape 2)

**Dave Sommers:** I would recommend the passing of this uh... I'm a pork producer down in you can say Grass Creek uh... I am a farrow-wean operation I'm producing approximately the same number of pigs per year which Bryan is going to be finishing uh... this being the first test of the I guess the new zoning laws uh... he has done I guess you might say jumped through all the hoops with uh... what IDEM required information as far as the Plan Commission required Fulton County does have some of the stiffest rules in the State as far as zoning rules in order to get a building passed uh... IDEM

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

is very extensive I know I... tonight I've brought just like a spy check report that I had the last time that uh... IDEM come out they do make periodic spy checks on buildings uh... the requirements they have with the manure testing and soil testing it is very thorough uh... Bryan is obligated to follow all those and I guess in a lot of ways that agriculture is out in the country side and there... there the only place for it you gotta be out in the country somewhere and yeah there's gonna be some people that may not particular want it very close or even within a mile or two of their area or something along that line but we as pork producers we need to have a place to be able to raise pork and we're doing it more efficiently more affectively and trying to be able to produce and make a living by doing so and raising the best quality product possible um... if I and I have a son that's with me in the operation if we have any hopes in expanding or growing in order to be able to stay efficient I know eight years ago I had fifty sows now I've got twelve hundred it's because the industry has basically forced us to go in that direction eight thousand head of hogs is not uncommon in the industry it's not classified as... as a big huge hog factory it's just a good sized family farm and **(inaudible)** and uh... that's the way ours is too and uh... I would hate to see you folks turn this one down because there's a lot of us that make our livelihood that way and there are fewer all the time the only way to preserve a family farm is to be able to maintain the opportunity to be able to stay competitive and stay cost effective and efficient in the industry **(inaudible)** go and I totally support Bryan and I wish you would too

**Mark Martens:** Thanks Dave

**Gerry Hizer:** Gerry Hizer

**Mark Martens:** Yes

**Gerry Hizer:** Wayne Township also a hog producer with my two boys uh... we have an operation we went through this here back in ninety-eight and at that time that's when IDEM was preparing the new rules they had a Think Team down there with uh... I forget how many colleges were involved and how many environmental groups were involved all the people there **(inaudible)** and very smart intelligent people they knew what they was talking about you know they come together I think there was a lot of head bashing along the line I talked to one of the IDEM people **(inaudible)** smart people to agree upon anything I think you know what I mean but they come up with these rules and I guarantee ya you seen a lot of hog producers skid-addle and the reason was probably they didn't have a permit they was already supposed to have and secondly they was gonna have to spend so much money to stay within the law now then we are in this new mode we don't have an option Bryan decided to spend his money the thing I see about Fulton County is that even a part of it and when you feel like people within the Fulton County selected group of people are smarter than all these PhD's really but that's alright if that's what it takes to make the County and the people in it happy I don't have a problem with that the next thing to remember is a fact that the economies that it's gonna help within the group not just

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

the hog producers it takes corn it takes **(inaudible)** there's a certain amount of labor all that is gonna be gone I'm not gonna say it comes from Fulton County but it's gonna come within a regional area if... if you're not a hog producer but a corn raiser it's gonna be beneficial nextly don't forget unfortunately there's a thing called county taxes now we can they only keep their buildings down and there's very few people building for this purpose and it's costly as a taxpayer I guarantee it and to be honest with you you start restricting any expansion what you're saying is that my and my boys we are saddled with the tax load of this County for duration because you can't expand nobody else can expand and it's slowly slowly it's just gonna dry out we cannot afford to do that and we are it's... it's come quite a hurt really is some of you up there are involved in it I know but uh... the main thing is I understand there's people (tape clicked off) approve the smell yes that's part of the farm has been part of the farm for three hundred years or whatever unfortunately I... just you can't... you can't take the stink out of hogs you can't take it out of a cow I'll be honest when I'm out here golfing I really don't like the smell of that fiberglass but you know I don't hear no complaining I think it's fairly much more harmful than this hog manure the thing about it is it's gonna be controlled so stringently even more so the... then grain farmers now I'm just wondering why don't the grain farmers have to do what we're having to do what is this two year and I think most of them do a two year revolving uh... check the soil and then there's certain levels that they have to in now currently we are the only people who have to stay there and there's not a problem I guarantee ya uh... with him especially having twice the acreage uh... there is no way that the nitrates and the uh... potassiums and phosphates is gonna get out of realm **(inaudible)** uh... but the next step he's gonna do I bet we do it is grid sampling that is you're not just going by texture you're doing two acre lots you know exactly you'll know much better than you're neighbor guarantee far as growing a crop or anything else this is all things that guarantee he's gonna do down the road I'll bet he would just for his own information especially because this manure it... you don't... you won't... especially starting up you don't know for sure what's gonna happen how much... what the nutri... nutrient value in it is gonna be so if you factor he's supposed to have these and he will uh... I... I the main thing is people uh... don't restrict us people out there from making a living uh... I guarantee there's people doing things out there that I don't like but they're making a living and I appreciate that at least their not on welfare so that's all I got to say

**Mark Martens:** Thank you... anyone else in favor

**Tom Smith:** Um... Tom Smith **(inaudible)**

**Mark Martens:** We need your address Tom please

**Tom Smith:** Oh 745 West 700 North, Rochester, I'm the Fulton County Farm Bureau Chairman I think this is a fine facility and it's gone through all the hoops and the technology that we have and possibly can if we can't do this than what can we do I'm real fearful for agriculture in this country because we're putting so many restrictions on them

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

that it's gonna be very hard to get it for Bryan cooperated as far as I can see well beyond what's reasonable and uh... as far as safety of the project as far as this kind it's as safe **(inaudible)** compared to an older operation that's been here compared to the way we used to do it there's no comparison

**Mark Martens:** Thank you

**Tom Smith:** Yeah I... I didn't wanna take up your time but

**Mark Martens:** If there's more I didn't mean to cut you off either... ok

**Julia Tam:** Um... I'm Julia Tam Bryan's wife um... I'm glad to see the turn out tonight and um... I hope that they... our friends and neighbors both now understand what we've been through in seventeen months that we've spoken with and um... exchanged information and ask questions and um... been asked questions um... clarify things to make sure that everything is done in the correct way and that... that you are more aware of it tonight and that you will feel more comfortable with what we are hoping to succeed **(inaudible)** I'm just... I'm for it so

**Mark Martens:** Well I'm glad

(laughter from everyone)

**Julia Tam:** There'd be a little problem

**Mark Martens:** **(inaudible)**

**Dale Herrold:** Dale Herrold 4701 West 600 South, Kewanna, Indiana uh... Plan Commission wrote the rules Bryan met 'em you changed the rules Bryan met 'em uh... he's done everything that's been asked of him and uh... I think it's time that uh... you give him the ok and let him get it started he could of already had 'em up and been getting income out of 'em

**Mark Martens:** Thank you... yeah

**Jim Erickson:** Jim Erickson 2829 State Road 114 West, North Manchester, Indiana I'm in... I'm in favor of it um... we've got growers throughout the northern half of Indiana and I guess you um... the only thing I like the most about it is that it's an opportunity for the grower to... to make some money to stay on the farm um... you know I think it improves their quality of their life it's a... main thing was it's been able to uh... uh... family farms to... to have a son or a daughter that wants to join the operation they can come back to the farm they don't have to leave and uh... that's the thing I like the most about it so

**Mark Martens:** Thank you... yes

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

- Linda Shanelove:** Uh... Linda Shanelove 1135 Old U.S. 31, I am a Fulton County resident but also a Miami County business owner dealing with five different counties I can honestly tell you fellas' that some of the biggest operations have the best run facilities some of the real small antiquities operations are the ones that there's gonna be a problem with pollution or contamination it's there the laws and rules that all you counties have put into place are preventing that so I'm definitely in favor of the rules and regulations you're going through but in favor of the Tam's getting this facility
- Mark Martens:** Thank you anyone else like to... yes
- Kevin Smith:** Kevin Smith 4107 West 400 North, I don't have any real new facts to give you guys uh... I'm just here to support Bryan and his family and... and request to get this operation going I being a corn grower here in... in Fulton County you know the hogs are gonna eat a lot of corn and I just want to show my support
- Mark Martens:** Thanks... any others in favor... yes ma'am
- Joyce Zartman:** Joyce Zartman 2327 East 600 South um... I just want to say that I to am in... in favor of this I'm so thankful that I am able to live by I have a milk farmer just down the road I have hog farmers just west of me and uh... I'm so appreciative that this county has a lot of these men and these women to continue farming and uh... I would hate to see that go away after they've met all the requirements their... their wonderful people and uh... I will say this knowing Julia as long as I have she is one of those very protective mothers she has been all her life and if she saw any dangers in these uh... I know she would put a halt to everything that's been going on here and uh... I just wanted to let you know there is some support out there for you
- Mark Martens:** Thank you... anyone else like to speak in favor... yes sir
- Scott Strong:** I'm Scott Strong I'm a lawyer in Logansport and I represent the Tam's but I live in Logansport in the last three months I've been contacted by a huge farm in Michigan to put in uh... a large dairy operation in Cass County I'm in litigation now uh... in Marshall County in Jasper County uh... with uh... two of the dairy herds over there that the two dairy herds combined are twenty-five thousand uh... dairy cattle owned by a firm in Texas and as... as a... a lawyer practicing in business um... agriculture economics in small rural Indiana we are contacted frequently by large out of state cooperations seeking our assistance in either modernizing or purchasing for building facilities here in Indiana I grew up on a farm myself uh... and it's sad to see the family farms be gobbled up by these huge national agricultural conglomerates uh... I shouldn't complain because they give me... they give me business but when I got the call from the Tam's and found out what they were doing as the Tam Family Farm operation uh... trying to make a living on their farm here in Fulton County it seemed to me this is the way it ought to be if permitted and I said to the Tam's sure I would be here tonight if I could do anything to help them and it just seems to be a scene that a lot of the counties are running the local people out so that the agriculture is

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

actually being performed by your large cooperate conglomerates from thousands of miles away and I think that under the circumstances uh... the Tam's have went far beyond the call of duty to make sure that their operation is a state of the art operation that complies with not only the law but surpasses the laws and by golly if the Tam... if the Tam's don't get this operation in it would seem to me that the family farm here in Fulton County ought to just decide well we can't do business in Fulton County and that would be a shame thank you for listening

**Mark Martens:** Thank you... anyone else in favor yes

**Dick Moss:** I'm Dick Moss 4330 Eel River Road, Peru, Indiana I'm an animal waste uh... applicator I'm in favor of it

**Mark Martens:** Ok thank you

**Jeff Eckrote:** Jeff Eckrote Macy, Indiana um... we owned a... a set of buildings just like Tam's wanting to build the company we feed for is TDM you're not gonna find a company that'll care as much about the hogs and the facilities and the environment as the uh... Herrings do and I'm in favor of Tam's having the building

**Mark Martens:** Thank you... anyone else in favor

**Dave Emery:** Dave Emery 4158 West 1350 South, Macy, Indiana I uh... am a grain farmer in Fulton and Miami County and currently I take the uh... contracted State Representative Bill Friend I take the uh... manure from his facility and I'm glad to get it it's a... it's far more beneficial to the gro... soil than commercial fertilizer on whole plus commercial fertilizer isn't tested nearly as much as this uh... we can't be guaranteed that the commercial fertilizer that industry isn't sticking some uh... heavy metals in there and polluting us indirectly so I'm in favor of the project

**Mark Martens:** Thank you... anyone else in favor speak now or forever hold your peace

**Mike Veenhuizen:** **(inaudible)** me I'm Mike Veenhuizen 2925 South Honeycreek Road, Greenwood, Indiana I'm a practicing engineering consultant I have advised the Tam's in... through this whole process and uh... I am in favor of it and am of many agricultural and livestock production enterprises in the state of Indiana and Fulton County and the surrounding counties we're faced with the decision tonight and I'm confident that the uh... information that's being presented and the testimony that you have in front of you and the facts that you have in front of you should support a positive decision some of those aspects I think that looked at are the fact that one you... you showed a... an air um... influence model that has been built by Purdue University I can answer part of your questions as to why you think that the triangle or the... misshaped pol...

**Mark Martens:** Polygon

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Mike Veenhuizen:** Polygon is uh... reversed because that model takes into effect um... wind direction, topographic relief, slopes and other factors besides just wind direction and if you study this the factors of that site you'll find that air range is also an influence in that and that's part of what influences the model that Purdue has as well as the model that Minnesota and Iowa State University use and so you know based on information in that model there's a minimum impact to the community and what... what also enhances that model which uh... I'm always speculative uh... may not have taken into consideration but Casi pointed out that in your Intensive Use requirements you have a buffer zone which requires plantings and they have a very dramatic and... and positive impact on air emissions and movement from the site in essence your own Zoning Ordinance your own requirements are going to provide the proper and protection for the health and safety of the community another aspect of this that I think is very important is that this is a state of the art building these buildings are designed and will be constructed to meet or exceed all of our National Resource Conservation Service standard specifications they are in fact the federal agency that sets those standards and um... formerly cooperating with a protection agency in setting up new uniform um... strategies for confined feeding operations which will help to enhance the current ordinances that you have and Bryan will be responsible and... and commit to following those guidelines as well when they come into effect him early 2003 but the significance of that is that we add water tight construction in our concrete tanks we put water seals in every tank so we have the protective measures in there to make this such that the tile water that Bryan has indicated that he may sample or will sample for his own piece of mind will come out very fine in the sense that... that one the tile is there to protect the **(inaudible)** tanks and two these tanks are built with the standard that I have the up... up most confidence that they're going to withstand and to support that I have a piece of the concrete that I'd gathered for the Indiana Department of Environmental Management from a twenty-nine year old tank to demonstrate the durability of concrete and we were impressed to see that the pit there has very little corrosion if any at all and pitting in that concrete so the leaking that we hear about the porosity those are not factors in high quality concrete construction which are the standards this building will be constructed to in addition to that this fits in the landscape of Fulton County agriculture if we look at the footprint of this indust... of this intensive use area Bryan has asked for seven acres to be rezoned to meet and be in compliance with your ordinance the actual footprint of this farmstead for these two buildings and it's support structures is about three and a half acres if we look at a conventional a traditional farmstead we're going to consume three to seven acres in a traditional farmstead so this particular operation fits in the character of the zoning areas and agriculture district just the factor of... of... of the intensity or of the number of animals that require in Fulton County to go through this process but it will be a natural enhancement of the area that the Tam's live in and the community that lives there I was... had the privilege to see some of the literature that was provided um... either from your local newspaper or uh... has been sent out to uh... individuals in this community in the references they... the risks of pollution as it

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

relates to animal agriculture well any industry that misuses or abuses their technology is at risk of polluting Mr. Tam has almost nearly twice the acres he needs to effectively meet the agronomic application guideline a gentleman stated the... the value of the manure so I won't restate that but I think it is important to realize or to recognize that the application of manure from those eight thousand pigs will amount to a quarter to three tenths of an inch of application per acre or across **(inaudible)** so we're not talking about feet or several feet of manure flooding the area there will be about quarter of an inch to three tenths of an inch of application which then carries the nutrient density or nutrient content these crops in Fulton County can **(inaudible)** and so the... the and the fact that we're injecting it and mixing it with the soil eliminates the potential for run off and the potential for odors and emissions can be um... a factor of application and that's already a stipulated criteria for Mr. Tam and so the... there are very few risks associated with this **(inaudible)** operation and the operational plans that are inquiring and we've already heard stated the process from 1997 to now and what's gone through in the IDEM regulations and I believe you have in your attachments Rule 9 which is a full page of record keeping and documentation to meet the environmental compliances with the state of Indiana which is a major step forward from 1997 when there was no record keeping and no accountability and so that accountability is now in place and is a mandatory requirement of all confined feeding operations so with those comments I appreciate your attention and welcome any questions

**Mark Martens:** Thank you... anyone else in favor yes

**Wayne Bode:** Uh... Wayne Bode 4750 West 300 South, Kewanee grain farmer there's a large hog operation two miles south of us and another large hog operation a mile and a half north of us we've never had a problem and with all the strict rules that... that are in place now I'd say go for it

**Mark Martens:** Thank you yeah

**Harry Richter:** Harry Richter 4801 State Road 25 South, Rochester I support the operation

**Mark Martens:** Thank you Harry anyone else in favor don't want someo... yes

**Mark York:** Uh... Mark York 4738 West 800 North, Roann, Indiana I'm also in support of it and a contractor/owner my self for another company

**Mark Martens:** Last call anyone else that would like to speak in... in favor of this petition ok thank you at this time we'll open things up then for those that would like to uh... speak that are in opposition again I wanna remind you to uh... do the best you can at uh... trying not to be redundant and um... we need for you to rise and state your name and address so at this time anyone that would like to speak that is opposing this yes sir

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Brian Bonnell:** I'm Brian Bonnell I'm from uh... 6770 South 250 West uh... four tenths of a mile southeast um... I'd like something... can I show something on your projector or you... it's nothing the Board doesn't have you've already seen it's revised

**Mark Martens:** Revised I'll entertain that

**Brian Bonnell:** **(inaudible)** I have a copy of the map I mean if we're gonna talk about this we might as well talk about facts an... and I'm not here I like the Tam's I'm not trying to bust their chops or... their good neighbors and... and this is a map uh... that Casi had the map that I had from the minutes of all the meetings that shows I'm sorry that shows a... the residence from the proposed operation um... there's nineteen on the map **(inaudible)** and uh... to be real honest that's not accurate um... so I've made I took this map and made a revised map and the revised map looks something like that instead of uh... nineteen homes within the... within the mile and a half range there's actually forty-eight homes um... the ones that... I drew the mile circle on here I didn't take the scale they did the distance would be...

**Casi Cramer:** Harry flip the other light switch would ya Harry flip the other yeah thank you

**Mark Martens:** Thank you

**Brian Bonnell:** Um... the red ones are inside the mile zone I just used the same it's not official but... but that's the most official I can make it um... the blue lines or the green lines outside are... are beyond a mile and uh... really under a mile and a half um... and I just think it's important to know in the minutes that were prevented... presented to the uh... Planning Commission on May 13<sup>th</sup> of this year would state that uh... this map I believe was part of the minutes that there's four houses 2., .26 and 2.8 or... excuse me .28, two within .35 and two within .5 .45 and .46, four between .54 and .86 and seven up to 1.44 miles and everything's accurate from my findings up to the half mile mark we found an additional six residences that were uh... up to between .54 and .86 we found one at .98 and we found an additional twenty-two that lye within the mile and a half zone I just think it... it's not a I don't know what the criteria is for min... minimal residential district is um... but that sure doesn't seem like it to me um... but I don't know all my neighbors that live in all these homes I live right with me and my wife and our two children um... I know that there's thirty people that live right around me and then my best guesstimation is approximately a hundred... a hundred and twenty-five people that that are gonna be affected by this in one way shape or form um... I'm not... I'm not in support of the potential odor but that is obviously a cost of living out in the country um... it's the uncertainties that really scare me and my family accidents happen I don't doubt that Bryan and Julia would do a wonderful job but it... it's the uncertainties that can happen that can contaminate our water and suck our wells dry and things that we can't prevent that are gonna be too late after things happen and I'm just concerned about the safety of my family and my neighbors that's really all I have to say

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Mark Martens:** Thank you... that's would someone get those lights over there too please anyone uh... else speaking against... yes

**Randy Carr:** Yes my name is Randy Carr I live at 2481 West 600 South with my wife Gloria about a half mile from the proposed site I do have some information I'd like to give you guys

**Mark Martens:** Certainly

**Randy Carr:** First of all this is a study that come from the University of Missouri it's about land values around similar operations like this **(inaudible)** I'll wait till everybody gets one **(inaudible)** down on the key findings the average distance was 2.2 miles proximity to a CAFO... CAFO stands for uh... Animal Feeding Operation does have an impact on property values loss of land values within three miles of a CAFO would be approximately 2.86... 2.68 million that's approximately **(inaudible)** and if you flip the page on the back it's talking about the different commu... communities **(inaudible)** with **(inaudible)** today **(inaudible)** and how the issues involved **(inaudible)** and then on my second part of that I do have a realtor's statement this is from different realtors in Fulton County all these realtors are from Rochester that signed this **(inaudible)** it is my belief as a realtor licensed by the State of Indiana, that the establishment of an eight thousand head hog Confined Animal Feeding Operation, would restrict the use of, or devalue the surrounding land and we have eight signatures from here in Rochester on the back of this is from Cass County this is for a four thousand head hog operation which was some time back it doesn't have anything to do with this operation but I thought at least **(inaudible)** this and also me personally what scares me the worst is the water situation you know what you... what you do if the water does get contaminated you're already at that point and you... you go by a bottle of water and it's a dollar fifty or more a piece if the water was contaminated and it scares me and we have two... two children and I of last Thursday I don't know if anybody seen it on the news but up on... on the St. Joe River up in South Bend they closed it for **(inaudible)** up in St. Joe on the river it's for e-coli and it said the two main reasons for it's closure was for... from uh... illegal dumping or... illegal waste and uh... and animal waste **(inaudible)**

**Mark Martens:** Thank you anyone else that would like to speak against please... yes sir

**Tom Culp:** My name is Tom Culp and I live at 6237 South 250 West I'm directly across from the proposed site I have something I wanna give you

**Mark Martens:** Certainly

**Tom Culp:** My biggest concern on this whole deal is uh... what happens if the well water does get contaminated right now there's three states um... North Carolina, Ohio, and Illinois that have major lawsuits pending on that matter right there contaminated drinking water how do you clean it it only takes one spill and then what that's really

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

the most thing that scares me on that right there I mean I know they would do everything on their part to keep a spill from happening but I have not seen concrete yet that hasn't cracked you know or... or a tile that hasn't leaked or what not some of this is pretty interesting I mean the uh... the governments now starting to get involved the EPA is starting to change the laws on this kind of stuff air polluting water polluting it's really getting to be a big thing I mean we're not talking a two hundred head hog unit we're talking eight thousand I don't think people grasp the difference between two hundred head and eight thousand so kinda drift through there that's my major concern on the whole deal I am against it

**Mark Martens:** Thank you yes ma'am

**Tammy Rhine:** I also have some literature for you but I would prefer that you kind of listen **(inaudible)** um... I would like to address the environmental impacts and I am so sorry to be in opposition of the Hizers'...

**Mark Martens:** Excuse me...

**Tammy Rhine:** they are very good people...

**Mark Martens:** name, address

**Tammy Rhine:** 4646 South 225 West um... first of all I want state that um... hog waste in general I wanna state two things hog waste contains large amounts of nitrogen and phosphorous that during the treatment process are released into the air leak from waste lagoons into grounds and drains and leech from fields into rivers and streams and a ten thousand hog operation produces as much waste in a single day as a town of twenty-five thousand people nitrogen on the ground and ammonia can quickly convert to nitrate which drain from the fields into waterways if it's over applied or if it's applied when plant needs are low now we'll get down to some facts some statistics on nitrogen pollution of wells um... according to the Indiana Department of Environmental Management which is the Board of... from 1994 to 1995 more than sixty percent of Indiana's population relies on groundwater for its drinking water supply and nitrate levels in groundwater are dangerously high in some areas of the State a case and point is the city of Delphi in Carroll County the county leads the state in hog production Delphi Mayor, Sam Deiwert, wrote to the Water Pollution Control Board that the city has been exploring for new wells since 1996 only two sites were discovered however one had significant nitrate contamination and the second had significant bacterial contamination including e-coli contam... contamination of both sites contributed to regional agricultural activities again according to the Indiana Department of Environmental Management mu... much of Indiana's drinking water supply is bountiful of pollution due to the presence of the sand and gravel outwash plain which is a type of sensitive geology composed of sandy soils overlaying the aquifer twenty-two states that categorize specific types of agricultural pollution concluded that animal waste pollutes about thirty-five thousand

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

of the river miles that they inspect animal manure is the greater contributor than point sources to in-stream **(inaudible)** nitrogen and one thousand eight hundred and two or eighty-eight percent of the two thousand fifty-six watershed outlets in the United States based on a national effort by the US Geological Survey in Milwaukee, Wisconsin in 1993 cryptosporidium contamination of the public water supply caused more than one hundred deaths and an estimated four hundred and three thousand illnesses in Lagrange, Indiana County Health Department identified a cluster of women living near hog operations who experienced miscarriages after drinking water with high levels in nitrates inside their wells seventeen states have experienced groundwater contamination from livestock feedlots a North Carolina study of sixteen hundred wells adjacent to hog and poultry operations show that ten percent of the wells tested were contaminated with nitrates above the drinking water standard and thirty-four percent were contaminated with some level of nitrates and talking about North Carolina again um... data inspectors found one thousand two hundred ninety-three violations and deficiencies at hog factories nine hundred of these violations were serious and included eighty-six discharges from waste lagoons two hundred and twenty-one instances of applying too much waste on the land five hundred and eighty-five cases where waste lagoons were too full and eight cases where health factors were in violation of State sited re... restrictions in reference to air quality recent studies show that... that odor and associated air pollution from hog factories are now being linked to human health effects the National Institute for Occupational Safety and Health has issued warnings for several years to workers in animal confinement operations it was found that eleven percent had asthma-like symptoms one third had a flu-like illness called organic dust toxic syndrome and more than half suffered upper-airway inflammation and as many as seventy percent had some form of bronchitis limited studies have also been concluded which have found statistically significant increases in acute or chronic respiratory problems associated with residents near large-scale hog facilities in Iowa a study found neighbors of hog facilities had respiratory problems similar to those of workers in hog confinement operations the tiny particles in dust can aggravate asthma, allergies, damaged lungs, carry viruses or cause illnesses odors from large hog facilities also decrease neighbors' property values by as much as thirty percent according to the Peoria Journal Star 1998 those living within 1.5 miles from the operation suffered a thirty percent loss while those who lived two miles away received a ten percent loss studies have... studies have also found that odors from hog operations affect the neighbors' health a study in North Carolina again found that people living near these facilities reported more fatigue, confusion, and less overall vigor that status control subjects a more recent study by the University of North Carolina found that people living near large hog farms suffered significantly higher levels of upper respiratory ailments and it goes on and the University of Iowa and Iowa State released a study February 8<sup>th</sup> 2002 stating that hydrogen sulfide and ammonia had been measured near livestock operations in concentrations that could be harmful to humans both substances are pulmonary irritants and then of course let's go on to pathogens using current waste systems of hog factories hog waste applied to land contains one hundred ten thousand times more pathogens than human waste **(inaudible)** are

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

subject **(inaudible)** waste controlled technology requirements human waste must be extensively treated and disinfected before it can be applied to the land in contrast hog factories are not subject to these strict technology requirements nor do they treat nor disinfect the hog waste before it's applied to the land sewage treatment plants and other industrial polluters are and have been subject to strict State and Federal requirements for decades and hog factories have few if any requirements so I guess I'm in opposition for that I would like to make one more um... statement if I may is that these statistics are from people who um... a... are very educated and spend a lot of time dealing with these statistics and we are fooling ourselves if we think we are going to be the only State that TDM has... has to... is going to come in and not cause problems as they have in the other states that they have **(inaudible)**

**Mark Martens:** Thank you ma'am... anyone else who would like to speak against please... yes

**A.J. DePyper:** Uh... A.J. DePyper 6690 South 250 West **(inaudible)**

**Mark Martens:** No that's fine go ahead

**A.J. DePyper:** Uh... I'm one of the neighbors opposing to the hog facility uh... and this is a hard thing to do cause none of us really wanna be here Bryan and Julia are good friends of ours um... their son is one of my sons best friends I coach their son and this isn't fair for me to have to do but uh... my options are kind a limited here I can be quiet and take a thirty thousand to forty thousand dollar loss on my home property I can jeopardize my family's health and I can watch my friends and neighbors suffer um... cause I didn't wanna get involved so I'm making that decision to get involved and I think I've talked to any person of any conviction would call this a choice we have the documentation which I'm gonna give to ya shortly and we have the studies we have the research it's too big and too close it's massive and that's a fact um... you know if it was a half mile or three quarters of mile maybe we could live with this but we're talking a quarter of a mile from eight thousand hogs we don't even have anything that big around us nothings even close I mean that's a... that's more hogs than most of the hog farmers in our community combined except for maybe Hizer's now let's not get confused here we support the hog farmers the Hizer's is one of the best operations you'd ever hope to see the Zimpleman's are just a class act down fro... down the way but these are existing operations doing a good job you're talking dropping eight thousand hogs in the middle of our homes and we're not talking an agriculture district people we're talking something that has to qualify for industrial intensive use there's a difference and as Bryan's friends when he came to us and said that he was gonna do this we supported him um... we didn't like it and we told him we didn't like it but... but as his friends we would support him um... but at the time I had a lot of confidence that it would never get this far cause I've talked to people throughout three different states several Indiana counties, Iowa, Illinois I've been around ag my whole life and there's not one person that I've talked to that hasn't said that's ridiculous it's too big and it's too close it needs to be farther back and I

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

still support Bryan to have this hog building I think he should be allowed to build it...

(End of side B tape 1)

**A.J. Depyper:**

(Inaudible) the farmer says well you know we don't have real great zoning down here but I don't need zoning to tell me that that's too darn close ah 600 feet its ridiculous totally ridiculous a quarter mile doesn't get it for something that big with prevailing winds if you bring back the map it shows that wind coming right to my property I'm one of the worst ones effected um the water usage of that hog operation nobody's bothered to think of that we're almost certain our wells are going to go dry who's going to pay for that we're going to lose property values we tried to sell the house nobody wants it anymore two years ago when we considered selling it people lined up now the hog building goes in nobody wants it cause we we were willing to move and not fight this cause we don't want to upset our friends we don't want to be the bad people in the community but you know this is the right thing to do you know the right thing to do is say you know this is not acceptable for this community that's forty seven forty eight homes that that's that's not minimal residential density uh you know everybody's got an opinion and that's what the guidelines we're working with were based upon and I know I've got limited time so I'll just go ahead and hand you some stuff while I'll talk if that's OK

**Mark Martens:**

That's fine

**A.J. Depyper:**

I mean the research has been done it's no secret National Swine Research Center they document the health risks for something that big that close the Purdue Agricultural Air Quality Laboratory they've done the research that's documented fact recent their own research done sponsored by the National Pork Producers show viable bacteria about eight hundred meters and that's a half mile and that's a fact OK another interesting thing that the National Pork Producers sponsor an interactive web site that is an odor based setback their own website that they sponsor says that the setback should be anywhere from twenty six to thirty one hundred feet that's Purdue that's National Pork Producers I mean that's these are facts we're not these are not opinions these are facts now if the Pork Producers are sponsoring a website I would tend to think it would be in their favor now that active bacteria was tested during November and December with very cool temperatures low humidity's and moderate winds which puts everything in their favor and that active bacteria still went eight hundred meters what's it going to do in the summer time another thing I know the photography on the map doesn't show it but the Culp's live in a valley due west of that facility and if you don't think that's not going to settle down on his children and his place in the summer you know better you do know that it going to do that OK now I know Casi's down a lot of research and I appreciate her hard work and I know she contacted the the adjoining counties about these zoning ordinances but that's like two climbers standing at the base of Mount Everest saying geeze I don't know what do you think we ought to be able to climb this thing you don't go ask other novices what should we do you go to the people who've had

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

zoning for thirty years and you say what have you done and what have you learned and then we have failed to do that we have failed to do the proper research um now I don't expect us to be perfect but you know when other people are making mistakes and they've done this for thirty years I'd think they'd have something they could teach us I don't know why we've overlooked a wealth of information from the numerous universities now Iowa State University of Iowa did research on this too and if you want the total document I've got it I'll give you some viable pages and the governor himself requested that Iowa State which is one of the top Agricultural Colleges in the country and the University of Iowa which is one of your top medical colleges do a joint study so that they'd have the best of both worlds so that they know what was going on after that Iowa passed a law right away and basically it says aint nothing going to be within a half mile based off that now if it wasn't valid research I don't think they would have made a law that quick now this is the Senate Bill law these are some of the reports and basically they found that they had increased several symptom clusters mainly eye upper respiratory systems among those living within two miles of swine CAFO now these are larger operations we're talking about we're not talking about the nice operations we have down the road like Zimpleman's we're talking about these monsters and that's what we're wanting to put in here something that's a very large facility this is the research its very thick its very detailed it talks about the health risks it documents the health risks by medical and agricultural colleges it has setbacks it has rules and everything else that apply and what the heck you can have the whole thing here's the I highlighted some stuff so I mean yeah Bryan and Julia have done a great job they've done their darndest they've counted on what people told them would be acceptable guidelines because they would never do anything to jeopardize the safety and I know that cause they are good people but they were given bad information um you know people keep saying well you are in an Ag District yeah we are in an Ag District but you're talkin dropping an Intensive Use District right in the middle of it and there's a difference there too and you talk about the soil tests being done in the fall but if you you know it's a common fact you don't apply nitrogen in the fall in our area all the farmers in here know this but they're going to inject this heavy amount that the State of Illinois considers oh about four to five times heavier than it should be and why they consider it too heavy with their good soils but yet we can apply it four to five times heavier in our wet sandy loams is a good question maybe cause they've been around it longer and they know the problems but uh we don't apply nitrogen in the fall because you're not farmin it leaches it won't be there in the spring so why are applying it in the fall when we know it's going to leach down and go into our ground water there there's nothing to pull it up that's planted there and I take it my time is up

**Mark Martens:** Yes it is, thank you very much

**A.J. Depyper:** OK thank you very much I'm opposed

**Mark Martens:** Thank you anyone else like to speak against...yes sir

**Phil White:** Ah yeah Phil White 3783 East 400 North Rochester uh can I ask a couple of questions like like what is a unit

**Mark Martens:** Casi

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

- Casi Cramer:** Like what one
- Phil White:** One unit I mean what I'm getting at is
- Mark Martens:** Animal units is that what you are referring to
- Phil White:** Well whatever you guys use the term for unit because I've been reading this in the paper thinking you're talking about thirty two hundred pigs and now I come down here tonight and find out we're talking about eight thousand is there is any significance for the use of the word unit
- Casi Cramer:** The way uh most counties deal with determining like how many animals is they give like a nursery pig they give it a certain um unit number and then just say you can have twelve hundred units of animals and then they just have a chart that says a duck is one-one hundredth of a unit um a finished hog is four tenths of a unit so they will have thirty two hundred units on there which would be eight thousand hogs so that's
- Phil White:** So it a technical term
- Casi Cramer:** It's all it is just its an easier way to uh to maintain all the different types of animals and figure out how many they get somebody figured it out I have no idea why I guess they thought it was easier
- Phil White:** OK well I live uh I live diagonally across the county from this this operation and until tonight I didn't really know that we had that many uh pig farms within uh Fulton County uh and I can easily sit up here and say it doesn't affect me and um not sympathize with the people who are going to live close to that but yeah I think it will affect me because if we don't put our clamps on it if we don't stop it now uh probably pretty soon they are going to be right next to me and um it will affect me so basically what doesn't affect me right now and uh I'm against this type of operation
- Mark Martens:** Thank you anyone else would like to speak opposed yes sir
- Frank Fugate:** My name's Frank Fugate 1125 East 450 North Rochester for the last eight years I've been haulin building materials to all these hog buildings through the Midwest out to Colorado over to North Carolina accidents can happen state of the art what killed all the fish down in the Chesapeake Bay those accidents that can not happen geographically is Mill Creek lower than the area you are going to put this injection on if Mill Creek is lower it will get into it um and if this is going to be a leaching how deep are you going to inject this into the soil and then in the drought years which Iowa the state of Iowa which is uh the biggest hog producer right now they're having problems now during drought years of creating a hard pan three foot down where the water can't leach it what's gonna happen is that water gonna run to Mill Creek or where's it gonna run if it can't get through the hard pan during drought years and what type of containment do you have in case of an accident does happen how many gallons of manure is gonna overflow I think I read something about six point two million gallons a year that's a lot of manure how you gonna contain it if an accident were to happen so I do oppose this
- Mark Martens:** Thank you anyone else would like to speak against yeah
- Gary Sriver:** Mark I'm Gary Sriver um 1000 County Road East in Akron and there's a couple of questions that I think the Board has to deal with in regards to this whole situation we've heard a number of of people speak about respiratory problems and I am probably more concerned about the respiratory problems that you spoke about

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

young lady than anything else in regards to these types of operations because there already have been in a couple of states lawsuits filed by people who claim they have respiratory problems due to these kinds of confined feeding operations I'm not sure whether a filtering system could be installed where there are fans in Bryan's operation that would cut down on the pathogens and and uh other things that come from um four thousand and eight thousand dollar uh eight thousand hog operations or not I'm I'm not sure about that that's something we need to look at and discuss I appreciated the one gentleman talking about the fact um a lot of small farmers are going out of business uh and uh I (Inaudible) to try and keep them here I think there's one thing that concerns me however the bigger we get the bigger farm operations get the more chance there is going to be for acquisitions by as you mentioned by out of state people I don't think there's any doubt about that my concern however is not out of state people my concern is the countries that are involved in the NAFTA trade treaty agreement and in the NAFTA treaty agreement there's a provision and it says that if a company from Mexico or a company from Canada would buy a confined feeding operation in any of the states in this country all fifty states the zoning laws do not apply neither are the county zoning laws the state zoning laws or the national laws the EPA would have no control what-so-ever what-so-ever over any particular acquisition of a large confined feeding operation in Fulton County so my question is where do we stand as far as a county as far as liability is concerned if one of the neighbors of one of these confined feeding operations comes down with a respiratory problem that they can prove that due to that confined feeding operation there is an illness they will not only sue the county they will not only sue the Commissioners they will also sue the state and where is our liability lie as far as the county is concerned those are the two questions I think that you have to address and think about when you make a decision here I'm certainly not against Bryan I'm very pleased I've been to three or four of these meetings in which I think he has jumped through all the loops and I think they've been absolute gentlemen uh gentlemen throughout the whole thing but at the same time I think these are questions that I have addressed and pointed out to the Planning Commission and I'm going to point out the same I'm point out the same thing to you where is our liability and also what happens if they are acquired by a Canadian company we would have absolutely no control what-so-ever over any of the pollution environmental problems at all thank you I'm not strong against this I'm not necessarily for it either

**Mark Martens:** Thank you we don't have a middle of the road

**Gary Striver:** I'm afraid of that yes

**Mark Martens:** Politicians so I should have that politicians category I guess yep in the back I'm sorry

**Jim Hoyer:** Hi my name is Jim Hoyer and I live 404 East Main Street in New Albany Indiana and I'm the state wide farm policy coordinator with the Citizens Action Coalition Indiana uh CAC is uh a nonprofit nonpartisan membership based organization located in Indiana they have about three hundred fifty thousand members throughout the state and I do work on statewide farm policy issues for CAC uh my work involves both state and federal farm issues uh geared toward uh keeping the family on the farm the um reason I'm here is that our members in Fulton County

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

have voiced concerns about this operation and I'm here to speak against the operation I don't think it's a good idea but before I uh proceed I'm kind a want to get my thoughts together about what how to approach this I have some questions and I was wondering if I could ask Mr. Erickson some questions uh before cuz I don't want to say something that maybe is not true cuz I uh I talk to uh uh someone from the state government in North Carolina and they told me that TDM was affiliated with Murphy farms I was wondering uh what the nature of that affiliation There there's no affiliation with a Murphy farm

**Jim Erickson**

**Jim Hoyer**

**Jim Erickson**

OK

There's two divisions of TDM there's Hog Slat that's the parent company and there they manufacture equipment and build buildings and Murphy is a customer and with the TDM side there is no no affiliation you know we don't uh we don't buy feed from them or buy (Inaudible)

**Jim Hoyer**

OK so the uh the reason I ask this so what I understand of this operation is Mr. Tam is uh going to put up the buildings and own the buildings but uh TDM going to own the hogs TDM is going to feed the hogs and uh Mr. Tam doesn't have a choice where the feed comes from that's up to TDM kay sounds more like like TDM's actually the manager of the operation and Tam owns the buildings and uh TDM also say they operate a lot of farms in North Carolina uh they apparently they have a lot of contract growers in Northern Indiana and they also have some other hog farms in Northern Indiana that uh the way I understand it TDM actually owns the buildings owns the land and owns the hogs but I think there's uh two farms in Carroll County where TDM owns over 10,220 hogs and 45,000 layers uh three farms and these are listed as active um on IDEM's list three farms in Wabash County um where TDM owns with 12,000 hogs one farm in Miami County where TDM owns with 4,000 hogs and one farm in Cass County where TDM owns 4,000 hogs and these are just uh random buildings owned by TDM and hogs owned by TDM these don't count the other contract growers through TDM so this is a very large corporation and these are corporate owned hogs and the reason I want to bring that point up is that uh our organization works on saving the family hog farmers and it works to preserve independent hog producers in the state of Indiana and over the last 20 years we watched two out of three of the hog farms in Indiana and two-thirds of the nation's hog farmers have gone out of business and they haven't gone out of business because of regulations passed by IDEM or regulations passed on the federal level they've gone out of business because of the increasing corporate control over the hog industry this field is the largest path and the largest owners of hogs in the country they own over 700,000 sows they own enough hogs to manipulate the market prices for independent producers and what they'll do is manipulate market prices down and drive independent producers out of business until they take over that market share um its brutal business and politics and family farmers all over the country are suffering that's why we've lost two-thirds of the farmers in the United States and two-thirds of farmers in Indiana and so the uh what I'm seeing with this operation is this isn't a way to preserve the family farm this is the reason there isn't two out of three hog farmers left in the state of Indiana because of corporate owned hogs corporations are raising the hogs not the family farms so uh for that reason that

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

uh that's one of the reasons I'm against this operation uh I'd like to also talk about the the use of this land if 8,000 hog operation comes into this area it definitely going to restrict the use of this land if I was a builder I'm certainly not going to try to uh build some houses next to a 8,000 hog operation I'm not going to be able to sell them or not for much money uh there's also health issues but most people mentioned it so I won't go into that what other people said but um Iowa uh Iowa State University got the study that show that bacteria is actually emitted from these hog buildings into the air there's studies uh hog units as somebody already said that bacteria are uh actually antibiotic resistant bacteria that's been found near these operations because of that reason Iowa there's several counties in Iowa the Board of Health in those counties imposed a moratorium saying no more confined animal feeding units over 1,000 units no more allowed in the county uh North Carolina where TDM is from has put a ban on confined animal feeding operations and while the two year ban is instituted I think its gonna run until around 2003 I believe that's one of the reasons why these operations want to come to state's like Indiana that they've been they've been kicked out of their own state's there's a ban they can't build anymore so they want to come here and as far as this operation being good for farmers that raise corn well I mean there's Mr. Tam is not going to be able to say you know buy corn I want you to buy corn from my neighbor to feed my hogs TDM's supplying the corn they're going to get it wherever they can find cheapest source right now the price of corn is already below the farmer's production cost that's why these operations want to come here it's a great source of cheap corn and their not going to there's not going to be any benefits for farmers from this because they pay cheap prices to get corn for their hogs their going to be paying the prices below farmer's production cost and uh I'd also like to say the uh besides Iowa Ille Minnesota has done studies that show hydrogen sulfide emissions one of the reasons with these operations fail is because hydrogen sulfide is emitted low level exposure to hydrogen sulfide um can be harmful to people with respiratory symptoms especially children and because of that uh Minnesota has started a policy of Clean Air Standards for confined animal feeding operations and started monitoring air emissions coming from confined animal feeding operations and so there is health questions and there is uh land use questions there's the questions that if we want to preserve the family farm agriculture of the state of Indiana if we want independent hog producers producing hogs in a traditional family farm where the farmer raise corn and feed their own corn to their hogs then we don't need corporate hog coming into this state and into this county in this way thank you

Thank you

My name is John Robinson and I live in Rochester uh I heard a gentleman say that that he doesn't live close enough for it to affect him well I can tell you now that the water belongs to all of us Mill Creek belongs to all of us we don't even know what it tests today we won't know what it tests six months from now we won't know what it tests a year from now and if there is a spill can this Board say shut it down right now you can't do that you have to go through a procedure and I'll tell you what out at the lake right now we are still fighting procedures of nitrates and phosphates and there and about that was probably dumped in it ten years ago we're still fightin it its still

**Mark Martens**  
**John Robinson**

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

there if any spill of any kind hits Mill Creek it'll run all over this county so you could live ten miles from it you will be affected I am I will have to congratulate most of the people they'd done their homework almost as good as the engineers and lawyers here I'm against it

**Mark Martens**  
**Tammy Bonnell**

Thank you anyone else would like to speak against at this time yes ma'am I'm Tammy Bonnell I live at 6770 South 250 West and I just wanted to say that nothing personal against Bryan and Julia but I am opposed to the hog operation

**Mark Martens**  
**Gib Foster**

Thank you yes sir  
My name is Gib Foster I'm from the Mount Zion area Iowa is my home state I go home to Iowa quite often least twice a year and I hear horrible stories anybody's got a computer and wants to get on the internet check out HogWatch or CAFO's and read some of the stories that are happening out there with these large operations I'm against this

**Mark Martens**  
**Jerry Ryan**

Thank you yes sir  
My name is Jerry Ryan and I live at 4646 South 225 West um I would like to have uh Greg uh I don't know his last name is it Heller

**Mark Martens**  
**Jerry Ryan**

Heller  
OK could he before when we entered could he reread those four qualifications that that he read in the beginning about um what um what it has to be in order to use the improvements in an intensive use he went through that kind of quick and I'd like to him have him do that again and by the way I am against

**Mark Martens**

Kay we'll do that uh right before we I'll have him do that right before we actually fill out our finding of fact sheets so that you know what we are going to be considering I have one other thing um

**Jerry Ryan**  
**Mark Martens**  
**Jerry Ryan**

Yes sir  
One of the other gentlemen mentioned that some of the members on the Board were hog producers themselves um wouldn't that be a conflict of interest I know that you have in your bylaws it says that uh if there's any direct or indirect profit they can be uh made from uh made to uh it says there as far as a conflict of interest I believe its in the uh bylaws that if somebody had a conflict of interest like that that they would have to excuse themselves so

**Mark Martens**  
**Jerry Ryan**

If someone if we felt that that was the case yes sir  
Article four section three I would like you to review that if you could also because I didn't know until I just heard uh the person say somebody else uh sits up on the panel

**Mark Martens**

Anyone else like to speak against we will review that yeah speak now or forever hold your peace yes

**Lori Carr**  
**Mark Martens**

Lori Carr 2481 West 600 South I just want to say I'm opposed  
Thank you OK um I don't see any other ones anyone else uh want to speak against at this time OK at this time I'll entertain a motion then to close the public hearing public comments excuse me oh excuse me thank you back to you any rebuttal any comments

**Bryan Tam**

Yeah um Bryan Tam um like I said before uh we've been working on this for right at two years we have taken a lot of considerations of all the public safety I feel uh that we have uh addressed those uh to the best of our ability and uh and I certainly hope

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

uh the the vote is in our favor

**Mark Martens**  
**Michael**  
**Veenhuizen**

Thank you any last minute comments from the public either direction Mike Veenhuizen and representing Bryan Tam uh couple things I think that need to be put in prospective uh I'm familiar with much of the research that has been presented to you and um I think its important to keep in mind the differences between the conditions that this research was done under um I used to live in Carol Iowa and in Carol Iowa I lived in the country and in one square mile area there wasn't one hog farm as we think of them here without others you know in close proximity but they were four to eight so we're talking about different point you know sources and different types of production um there are facilities that are proposed here are similar to what we're you know is being done across the country the other things though that I think are important to keep in mind is you know much is been said about potential spills and pollution risks um keep in mind that this this will be a confined concrete tank below ground and so really the worse case scenario of a spill is not what we read in the paper of the above ground earthen storage and the most famous one that anyone can call is Oceanview in North Carolina but we don't have an Oceanview here we have two eighty by four hundred foot tanks and they are below ground and so the risk of a spill is not the same as what we read as the literature in the paper we have there we have taken into consideration the siting of this some of those criteria that relates to emissions and pathogens and you know I think we also have to keep in mind that we can we can document in the NPPC study that was brought forward documented pathogens but it was not clarified to you as to whether those were pig disease pathogens and that's why NPPC sponsored the research which is a major concern in pork production facilities is the effect of air quality and pig diseases which is detrimental to them to the future of this industry or whether it is in fact something that is assumnotic disease of which there are very few assumnotic diseases between pork and humans and so this assumnotic means that you are going catch the flu or catch a disease from those pigs and so there are a number of factors you know um that we need to keep in mind and I wish I you know I would uh support Bryan as I said before and I think its important to keep in mind what the facts are about his particular operation versus what we see across a wide cross section of the industry across this country

**Mark Martens**  
**Unknown**

Thank you  
I have a question for that engineer right there you're making it sound like this perimeter drain is one big safety deal where does that perimeter drain go into the field tile and out to Mill Creek am I correct if there is a spill it will end up in Mill Creek right or wrong

**Michael**  
**Veenhuizen**

If if there is a leak there is a potential that that could happen

**Unknown**

So that perimeter drain is not a safety factor whatsoever then

**Michael**  
**Veenhuizen**

The perimeter drain is a function of the uh design and will work to uh basically maintain the safeguards of the tank and that's what the tank itself is going to perform the purpose that it was designed to do

**Joe Wegner**  
**Bryan Tam**

(Inaudible) provide a safety valve for a spill

There is a safety valve

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Dan Walsh** On the designs... on...On those designs uh on that perimeter tile on the outlet there is shut offs in that correct

**Bryan Tam** Yes there is

**Michael Veenhuizen** And and a monitoring standpipe

**Mark Martens** Yes Dave

**Dave Sommers** Dave Sommers Kewanna uh Casi wasn't it announced at the last Plan Commission meeting that IDEM has stated that there has never been a pit leak or spill in the state of Indiana I heard it what it was Commissioners meeting or Plan Commission

**Casi Cramer** I don't know it didn't come from me

**Dave Sommers** Or one of them uh when Mark was talking about was talking about the requirements it was announced by somebody I don't know who it was that IDEM had stated that there hadn't been any pit spills in the state of Indiana

**Casi Cramer** Um I don't remember that Steve do you you were there do you remember

**Steve Furnivall** News to me

**Dave Sommers** I was thinking that was I know Dale and I was sittin here talking it was that that was stated at that time

**Casi Cramer** Kepler said that

**Dave Sommers** I don't know if it was Mark I don't who it was that said that's what we was just trying to remember who it was that said that there hasn't been a pit spill in the state of Indiana  
(Inaudible)

**Mark Martens** Not done yet we're not done yet I'm sorry  
(Inaudible)

**Mark Martens** Any other uh comments either way please yes sir

**A.J. Depyper** Um I would say the majority of our...

**Mark Martens** We need your name and address again please

**A.J. Depyper** Again OK A.J. Depyper 6690 South 250 West Rochester um our main concern is not that the um containment facility is gonna crack you know whether or not it is that's that's not the real issue to us the issue is that we really feel that the manure is being over-applied in this situation and we're worried about the leaching of the e-coli we're worried about the nitrates we're worried about the phosphorous we're worried about the ground water that's cuz that's what we drink we're talking shallow water tables my well go to thirty five feet we're talking a water table seasonal at one to three feet it don't take much to get into it that's what our concerns it's not that we're going to crack a containment dike somewhere and these measurements in Iowa a building is a building and 8,000 head is 8,000 head and a mile and a half to two miles is a mile and a half to two miles that's what these studies say

**Mark Martens** Thank you yes sir

**Jim Erickson** Yeah I'd like to just clear up a few things...

**Mark Martens** Again...

**Jim Erickson** Oh Jim Erickson 2829 State Road 114 West North Manchester

**Mark Martens** Thank you

**Jim Erickson** And um what the gentleman said down there yeah we do have about 2,000 acres  
(Inaudible) we don't have any layers I think he said thirty or forty thousand layers we

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

don't have any layers we do have three farms in Wabash we do have one in Miami County but we don't have any in Cass County and going back to putting family's on the farm like the two in well there's three in Wabash I would like to personally buy one of them myself and that's probably the only opportunity that I'll get from a banker to be able to actually do what I want to do and have something that's my own where I can build some equity so that's uh that's my goal anyhow um TDM I kept hearing corporate farms factory farms and I want to let you know TDM is family owned it's a father and three sons just like us you know they coach baseball and involved in the community and and uh so its uh one family in North Carolina doing business with a family here in Indiana is what it boils down to family owned and and we keep talkin about how big is big is big and we know American hog (Inaudible) is cheap and safe food and there's very little profit margin in any farm commodity so you have to have a lot of volume and where are you going to have that volume by partnering with family farms throughout Indiana and and everybody say well how big but you look at a grain farmer you know you used to be able to support your family on eighty acres a hundred acres now you have to farm a thousand its right here in your own community your neighbors are they corporate farms too so um but I didn't want to leave that oh and they say we were forced out of um North Carolina we weren't forced out of North Carolina um we got plenty of buildings we raise our pigs in North Carolina some producers do you know used to be in North Carolina contract production was so popular that you could build your sow unit and and you didn't worry about the nursery and finishers cuz there was a whole list of of individual families that would want to put them up so a lot of guys did build their sow units and have pigs coming on their way and then North Carolina does have a moratorium and that's more of a political issue than anything and so those people were forced you know they had to go elsewhere to find a place to raise those pigs we weren't in that situation we had plenty of places to raise pigs we elected to come to Indiana because low hog I mean low quarter prices low soy beans cheaper than North Carolina and also and also the access to packers we've only got a couple places in North Carolina where you can sell your pigs (Inaudible) two I'm sorry two we got two and here we've got we've got the option of four five six of them so (Inaudible) so we got more more flexibility so I just wanted to uh clear those things up

**Mark Martens**

**Unknown**

Thank you anyone else yes sir

You say big companies from North Carolina and they put a moratorium on hog producers the question would be why you know if they're if they're local to North Carolina why wouldn't they stay there they put a moratorium for a reason there and he also he also stated that TDM is a family owned uh business and so is Walmart so is Microsoft so is this pig operation

**Mark Martens**

**Tami Ryan**

**Mark Martens**

**Tami Ryan**

Thank you any other comments yes ma'am

Um I just wanted to respon...

Name please

Uh Tami Ryan 4646 South 225 West um I'm responding to um one of the men up front that said that something about the EPA saying that there was never any manure spills in Indiana that's not true according to er whatever he said IDEM he

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

said something according to the Indianapolis Star animal feedlots were responsible for 2,391 spills of manure in Indiana in the year 1997 (Inaudible)

**Mark Martens**

Thank you anything else I'll entertain a motion to close public comments

**Joe Wegner**

So moved

**Dan Walsh**

I'll take the second

**Mark Martens**

I'll take a second somewhere

**Dan Walsh**

Second

**Mark Martens**

OK we got Joe with the motion and Dan with the second any discussion Board OK all those in favor OK um Greg I want to defer to you right now to uh address the uh question regarding uh conflict of interest please

**Greg Heller**

The uh the citizen that brought that up within our Rules of Procedure that is taken directly from the state statute and what it says is that no member of the commission shall participate in a hearing or decision of the Board upon and zoning matter which the member has a direct or indirect financial interest and I'm assuming that that is being brought up in regards to Debbie Barts who is as I understand uh raises hog cattle and also does some grain farming am I correct in that

**Debbie Barts**

Yes that's correct

**Greg Heller**

Uh certainly I don't think that there's that she has any direct financial interest in the Tam operation uh I guess it would be very you know subjective interpretation is there an indirect you know financial interest because she's involved in you know some hog production uh that's certainly not the sole source of her income or their operation I mean in my opinion I see where there is a a conflict with that now if Debbie feels you know uncomfortable with making this decision and that there's the appearance of you know a conflict then certainly uh she can uh declare that and excuse herself from this decision but in my opinion I don't see as to where there's a conflict of interest revolving Debbie Barts and and this particular hog confinement operation this particular special exception

**Mark Martens**

Thank you Greg um do we have questions discussions we want to have at this time I know I do have I have a question for Mr. Tam and that is um what kind of a insurance do you intend to carry uh in terms of liability insurance and how much

**Bryan Tam**

Uh honestly I haven't addressed it I'm just being up front with you I have not addressed it

**Mark Martens**

Any questions Board I will say I talked to um Ron Withers who lives half mile due east of um the Friend's operation and I know some of us made an on-site visit there um and uh my conversation with him was that I wanted to know if he felt like there was any any loss of um outdoor life anything quality of life I guess is what I asked him and his response was that he felt that there was negligible loss of quality of life and um what have you and I spoke to another person who's about uh lets see um hard to think his first name now he was straight he was about almost a mile east of the Friend operation and um no loss of quality of life uh I will say both of them were against it but uh they felt that there was no loss of quality of life and what have you I did call all the realtor companies in Rochester and spoke to representative and everyone of them confirmed that there would be some kind of a negative impact on property values and um to what extent is very difficult to to pinpoint um Steve Gottschalk told me that he felt like it probably uh property close by uh would take

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

twice as long perhaps twice as long to sell and I asked him what does that mean and uh in my mind I'm thinking well time could be money and he said well I guess that would mean that it would have a negative impact and um the difficulty therein lies in how do you measure how much of a loss and um so I I uh fill that out as as personal investigation as far as interviews that I've had with people uh so the Board can take that into consideration also

**Joe Wegner**  
**Mark Martens**  
**Joe Wegner**  
**Mark Martens**  
**Joe Wegner**

Mark

Yes

I was on that same tour not at the same time with you but...

No

But I did in fact tour that facility and I went out to the far end of the building where the big fans were I stood within five feet of the direct force of that fan and expecting to have odor that would be substantial if not not real bad but when I was there I really didn't smell it as much now that might be a good day it might be a bad day I can't tell that one time um certainly didn't stop me from breathing and it certainly didn't cause me to have any kind of serious problem and thinking that that was in fact the problem my concern has been the water quality and how we could address that one of the reasons I brought up the fact about a well and using it as a monitoring well instead of just a plugged up piece of pipe in the ground however I think Mr. Tam has sort of addressed that problem by saying that he is going to uh monitor the the tile that goes around that I'm not to convinced uh about the information being shared but I think that something that we could uh have as part of a motion to do that if Mr. Tam is agreeable but I don't know if he is or not when I listen to all of the problems that everybody all of the objections that everybody has stated and there is a variety of them water seems to be the largest problem odor is the next largest problem and then the waste containment which is an off chute of the water I guess as being maybe the third and property values if you're living on a farm and if you're living in a farm area you're going to have to expect that things are going to happen I got people next to me that are putting in irrigation systems and that that might affect my well but that's part of farming you're not gonna to stop stop that from happening I don't think and as far as property values go there's a lot of people that go around and and sell property out in the country thinking that they're going to sell this little five acre strip or this two acre strip and put a house on it and that's going to do um be the testing of the well for the person who buys it but now you've got somebody who's got the right I think because he owns property and he farms it to do the type of farm business he wants to do and putting a hog operation down maybe not one not everybody's going to put an 8,000 head hog operation down but if I want to raise hogs next to on my property and somebody's got a house there I think I got the right to do that it is a big problem and I'm sure we're going to walk away from here with a lot of people unhappy but that's about what I have to say

**Bryan Tam**

Joe uh if if that's what it takes for the Board to agree I don't have a problem sharing that information with with along with the IDEM those tests from that

**Joe Wegner**  
**Bryan Tam**

And how often would that be done

Well our our plan was once a year

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

Doesn't seem to me that once a year is going to uh would be enough if something happened in the early part of that period of time that could be problems to you your family and your neighbors and I would think that two or three times a year would be more of a proper testing period and that's what it would be if I approached it and and made it for

**Bryan Tam**  
**Mark Martens**

Yeah I don't have a problem doing it twice a year

Well I gotta say that my biggest concern is I'm I'm having difficulty with uh in my mind seeing how this is not going to be injurious to neighboring property and speaking to like I said speaking to the realtors I spoke um with Dee Williams also um that's that's my big hurtle I don't I don't know how I could get over that the fact that it's not going to injure property uses in the same district or vicinity and uh how much is it going to injure I don't know well a scratch to to my my uh daughter at a time was a major problem broken arm was a major problem scratch to you and me not a big deal and I I have a difficult time measuring that with the people that uh are in the vicinity and I had every realtor tell me that there they felt an impact would be negative and I and I do think that the farmer that sold the ground to those people to put their homes there had a right to sell that land to make a dollar as he saw fit and my assumption right or wrong is that there there was some reason that caused that farmer to make that decision to give up that that land as far as working there whether it wasn't producing as well or whatever I don't know I don't know but my assumption is that there was something and it could be that there was demand for that property and I just think that uh that uh that has to be considered by us and I think it has to be considered seriously and taken into factor and yes if someone has the right to do with their property to make a living and I'm I don't think we're taking I don't think that would take away Mr. Tam's right to make a living it might take away on this bit of property his right to make that type of living but uh that's that's I'm just telling the Board that's that's my hurtle

**Joe Wegner**

You know Mark one time we had a case in that came across through this Board and it was involving a subdivision out there in an agricultural area and one of the questions I asked was that if in fact this thing goes through what is the farmer's right that has the ag land around that particular area and just because a developer puts out a piece of property and sells homes I find it difficult to understand how we can control uh the farmer or put put rules on the farmer that he doesn't raise livestock next to it and uh create some kind of problem for those people it doesn't have to be an 8,000 head hog farm it could be a poorly managed 100 head sow farm and make more odor than you'll ever see out of a modern facility that's designed for a particular purpose so I struggle on that part

**Dan Walsh**

You know in in that area uh Zimpleman farms for example where they are located they're not as large as what this proposed operation but they are a rather large operation and there has been new hogs put probably within hundreds of feet from them over at Fulton in the same wind direction the same basic direction these homes that seems to have concern about those people new the farm was there when they built the home they didn't have a problem with it uh uh I think we're talking about something here that first they're thinking there might be a negative impact OK and its something that they can't measure so do we take the right of Mr. Tam to do what

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

he wants to do because of something that we think that might be an impact uh uh I I guess the the new homes that have went up there west and north of Fulton uh granted maybe it was only two or three or four but you knew that situation was there they investigated it and they must not have a problem building so I I don't see where the negative impact is something that I I can't measure and and even say that for sure is there

**Mark Martens** There is the difference of those are people who made that choice knowing going in  
**Dan Walsh** Right granted

**Mark Martens** And and that's who (Inaudible)

**Dan Walsh** I know I I I agree with that but my my point bein was that somebody probably would not make a choice to put a home there if there was a negative impact

**Mark Martens** To that person

**Dan Walsh** Right

**Mark Martens** And and there's and and as each realtor told me there could very well be a person that that's not a problem and would go after that property but every but everyone after saying that came right back and said it's probably going to be their their professional judgment was that there would be a negative impact on property values

**Dan Walsh** I think and I I don't want to get into a debate here but but as I'm getting from what you said that Mr. Gottschalk said that it would take longer to market the property...

**Mark Martens** Longer to sell

**Dan Walsh** Longer to sell

**Mark Martens** Yes

**Dan Walsh** Basically to me it's longer to market and you never got a value of percentage lower or anything that you could deduce from that there'd be a negative impact because...

**Mark Martens** I didn't he did

**Dan Walsh** He did

**Mark Martens** Right that was his professional opinion...

**Dan Walsh** Because it takes longer to market

**Mark Martens** I'm not a realtor and I'm not going to I'm not going to get into that

**Dan Walsh** Bottom line is I have a real hard time trying to certify and state that there is a negative impact on property values I will agree with you that there's probably a more limited number of buyers for that property but it only takes one buyer maybe you need to search a little longer or whatever

**Mark Martens** That's nothing that economics couldn't tell you supply and demand

**Dan Walsh** Right

**Mark Martens** Demand goes down

**Linda Herd** I mean I mean in in the country there aren't that many houses that are for sale and then even when there are I think there there are buyers for them

**Mark Martens** I will say Susan Kelley informed me that small acreage tracts are a hot commodity right now so if you got one its gonna sell and in the very next breath she said probably that would have a negative impact if there's hogs I'm just throwing that out I think that's important in my mind that's important to consider

**Debbie Barts** But they are in the Agricultural District

**Mark Martens** That's true but we're talking about something that's Intensive Use which is a different ballgame it could be a factor (Inaudible) any other discussion Board Joe

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Joe Wegner** No nothing I can think of being productive  
**Mark Martens** Debbie  
**Debbie Barts** I um I would like to see the um I agree with Joe on testing the water if they're willing to do it twice a year I would like to see that happen  
**Mark Martens** So you are saying that might be something we want to put on as a condition  
**Debbie Barts** I think so yeah  
**Mark martens** OK that's something we might want to pursue then when it comes time for a motion then Dan  
**Dan Walsh** Um no more comments I do agree with testing the water  
**Mark Martens** Kay Linda  
**Linda Herd** I agree with testing the water two times a year  
**Mark Martens** OK I'll entertain a motion then to close the public hearing  
**Dan Walsh** So moved  
**Mark Martens** OK wait a minute I can't do that  
**Erica Ginther** You already did that  
**Mark Martens** We got to have our motion Casi was about ready to smack me weren't you we need to have a motion please and if there's any conditions uh that you would like to ah place on that uh motion then I would suggest you put that in with your motion  
**Joe Wegner** OK I'd ah like to make a motion ah on docket number BZA thirty seven oh four oh two Bryan Tam special exception of the one be approved with the added stipulation that water testing be done three times a year out of the tile drainage system adjacent to the present or the proposed buildings  
**Mark Martens** How many times was that Joe please  
**Joe Wegner** Three times  
**Mark Martens** Do you want any specifics as far as  
**Joe Wegner** Every four months  
**Mark Martens** Every four months beginning  
**Joe Wegner** Beginning first um first load of hogs  
**Mark Martens** First load of hogs from that point forward  
**Joe Wegner** Yep  
**Linda Herd** Now would that be would that be four months after the first load or I mean cuz there's  
**Mark Martens** He said the beginning  
**Joe Wegner** Beginning at the the I mean because it would be a mark to what's there and then we'll be able to use the every four months thereafter to see what type of impact that its making on the water quality  
**Bryan Tam** Joe one comment  
**Joe Wegner** Yes sir  
**Bryan Tam** There could be times of year there is no no water or nothing in that tile I just want to bring that up  
**Joe Wegner** As close as possible  
**Unknown** (Inaudible)  
**Joe Wegner** Well if you're going to test it at the source I wouldn't think that  
**Unknown** See you're gonna have nine  
**Mark Martens** OK excuse me Joe anything else

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Joe Wegner** No  
**Casi Cramer** Yeah the special exception would only be for Mr. and Mrs. Tam  
**Mark Martens** Pardon me  
**Casi Cramer** The special exception would only be for Mr. and Mrs. Tam  
**Mark Martens** There were recommended conditions in the report did you want to include those  
**Joe Wegner** Within the recommendations the recommendations within the report  
**Dan Walsh** I'll second that motion  
**Mark Martens** So we have a condition number thirteen condition then  
**Dan Walsh** Conditions (Inaudible)  
**Mark Martens** Condition number three I suppose so we've got uh testing the water three times a year from the tile around the buildings starting starting when the first load of hogs arrive and testing every four months thereafter

**Joe Wegner** Correct  
**Mark Martens** Got that Erica  
**Erica Ginther** I'm getting it  
**Mark Martens** While she's doing that I'll take this moment to read to those here uh as far as what we consider the four questions the four questions that we have to respond to question number one says proposed will not be injurious to the public health safety moral and general welfare of the community number two proposed use will meet the requirements and development standards prescribed by the Fulton County Zoning Ordinance number three the proposed will use the proposed use will not corrupt the general purposes served by the Fulton County Zoning Ordinance and will not permanently injure other properties or uses in the same district or vicinity and question four says the proposed use will be consistent with the character of the zone district therein and the Fulton County Comprehensive Plan those oh he's gone those are the four questions got that Erica

**Erica Ginther** Uh yeah I think so  
**Mark Martens** So so we have three three conditions  
**Erica Ginther** OK um the motion is to approve the special exception to erect a confined feeding operation consisting of two hog finishing houses which hold four thousand head each um I'm lost here hold on its to approve with added stipulation that water be tested three times a year from tile around the buildings starting when first load of hogs arrive and every four months after that um Mr. and Mrs. Bryan Tam exclusively hold the special exception to own and operate the confined feeding operation containing more than twelve hundred units of hogs within the above stated IU District and no more than eight thousand head are reared within the above stated IU District at one time

**Joe Wegner** Did she say water testing  
**Erica Ginther** Yeah that was the first one  
**Mark Martens** OK  
**Joe Wegner** Mark I'd like to make an amendment to my...  
**Mark Martens** OK OK hang on there  
**Joe Wegner** The amendment would be that the water testing results meet the criteria set forth by the water standards as being acceptable and that first test being the criteria to which we benchmark against now Erica can you get all that down there OK cuz I'm not

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

even sure I know what I just said  
**Erica Ginther** I'm just trying to think of how to word it  
**Casi Cramer** I've got it Joe  
**Mark Martens** We don't have a second on this yet do we  
**Dan Walsh** Yeah yeah I seconded it  
**Joe Wegner** Yeah oh you had a second you had a second  
**Erica Ginther** Yeah Dan already seconded it  
**Mark Martens** We already had a second so we're going to have to...  
**Casi Cramer** Just withdraw the motion and do it all again  
**Joe Wegner** Want me to withdraw that can we withdraw it I would like for it to be withdrawn  
and I would like to resubmit it  
**Mark Martens** OK let's do it the way you need it  
**Joe Wegner** I would like to approve I should say docket BZA thirty seven oh four oh two Bryan  
Tam special exception as a approved exception by this board with the following  
exemptions one exception being the testing the water three times a year first test  
being the base test in which the other tests would be monitored against and any  
variance from that would be reported to the IDEM  
**Dan Walsh** Just have him put it the same as the IDEM reports  
**Joe Wegner** Be reported as IDEM results submitted to the IDEM um paper with the um IDEM  
paperwork which is available to read  
**Linda Herd** Yeah which is available  
**Joe Wegner** Kay to include the other two exempt exceptions on page seven recommendations  
that Mr. and Mrs. Bryan Tam exclusively hold the special exception to own and  
operate the confined feeding operation containing more than twelve hundred units  
of hogs within the above stated IU District no more than eight thousand head are  
reared within the above stated IU District at one time  
**Dan Walsh** Second  
**Mark Martens** OK Erica you ready to whip it on us  
**Erica Ginther** Oh man OK the motion is to approve the request for docket thirty seven oh four oh  
two Bryan Tam to erect a confined feeding operation consisting of two finishing  
house hog houses which hold four thousand head each with conditions for water  
testing three times a year out of the perimeter tile every and after every four months  
after first load of hogs testing of the first base test is what other tests are monitored  
against and variation of test levels and future tests reported to IDEM Mr. and Mrs.  
Bryan Tam exclusively hold the special exception to own and operate the confined  
feeding operation containing more than twelve hundred units of hogs within the  
above stated IU District and no more than eight thousand head are reared within the  
above stated IU District at one time  
**Mark Martens** OK any discussion board  
**Linda Herd** OK was that were we going to say that those were available with the IDEM reports  
the water the the testing  
**Mark Martens** Yes we did yes  
**Linda Herd** OK  
**Mark Martens** Yes those are going to be made available with with the IDEM IDEM reports  
**Linda Herd** OK

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

BRYAN TAM, DOCKET #BZA 37-0402

**Mark Martens**

OK discussion board no discussion OK lets vote

**Mark Martens**

OK Erica I think we're ready

**Erica Ginther**

OK the motion is to approve the request for a special exception on docket BZA thirty seven oh four oh two Bryan Tam to erect a confined feeding operation consisting of two hog finishing houses which hold four thousand head each with the following conditions water testing must be conducted three times a year out of the perimeter tile every four months after the first load of hogs is delivered testing of the first base test is what other tests are monitored against any variation of test levels in future tests reported to IDEM or need to be reported to IDEM and all tests need to be made available with IDEM reports Mr. and Mrs. Bryan Tam exclusively hold the special exception to own and operate the confined feeding operation containing more than twelve hundred units of hogs within the above stated IU District and no more than eight thousand head are reared within the above stated IU District at one time Joe

**Joe Wegner**

Agree

**Erica Ginther**

Debbie

**Debbie Barts**

Agree

**Erica Ginther**

Dan

**Dan Walsh**

Agree

**Erica Ginther**

Linda

**Linda Herd**

Agree

**Erica Ginther**

Mark

**Mark Martens**

Disagree

**Erica Ginther**

OK that's a four to one vote passed

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, JULY 10, 2002

7:00 P.M.

COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR:  
JUNE 12, 2002

OLD BUSINESS

NEW BUSINESS:

*Bryan Tam (37-0402)*

*Willard Marns (40-0602)*

*John Duetzelle (41-0602)*

*Nancy Erwing (42-0602)*

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 10<sup>th</sup> day of July 2002 at 7:00 P.M., in the Commissioners/Council Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:05 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Joe Wegner; Debbie Barts; and Linda Herd. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller.

IN RE: MINUTES

06/12/02

Chairman, Mark Martens, called for any additions or corrections to be made to the June 12, 2002 Board of Zoning Appeals minutes. Being none, Dan Walsh moved to approve the June 12, 2002 Board of Zoning Appeals minutes. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Linda Herd, and Mark Martens being in favor and no one opposing.

It is duly noted there was no Old Business reported.

Chairman, Mark Martens, noted that BZA Attorney Greg Heller would be giving opening comments. Mark will read through the procedure so everyone is aware of how the Board will be conducting the meeting and the ground rules that they are required to follow. Greg made a few comments, regarding the Bryan Tam petition for the benefit of the public. Greg stressed the importance for everyone to remember the reason they are present. The reason being, to hear the petition for a special exception regarding a confined feeding operation. In order for the Board to approve the special exception, they need to answer yes to all four criteria listed on their written findings of fact forms. The Board will use all of the information that they receive and have received to make their decision. The four criteria are: 1) The proposed use will not be injurious to the public health, safety, morals, and general welfare of the community; 2) The proposed use will meet the requirements and development standards prescribed by the Fulton County Zoning Ordinance; 3) The proposed use will not corrupt the general purposes served by the Fulton County Zoning Ordinance and will not permanently injure other property or uses in the same district and vicinity; and 4) The proposed use will be consistent with the character of the zone district therein and the Fulton County Comprehensive Plan. Mark Martens explained each question is answered individually, therefore should any Board member answer no to a question on their findings of fact form; that member is obligated to disagree (deny) with the petition. It will take at least three votes in favor to pass the petition otherwise it will be denied.

IN RE: NEW BUSINESS

BRYAN TAM  
SPECIAL EXCEPTION

Bryan Tam, Docket #BZA 37-0402, Special Exception. Mr. Tam is requesting a special exception to place a confined feeding operation (CFO), containing more than 1,200 units of hogs within the

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

Intensive Use District (IU). This specific IU District is comprised of approximately seven (7) acres located behind a tract of land known as 6170 250 West, Rochester.

Casi Cramer, Plan Director, noted that the County Commissioners approved the rezone of this property from an Agricultural District (AG) to an IU District. If the BZA approves this petition, then the commitments that the County Commissioners placed on the IU District will be recorded, and the zone map amendment will be effective. Unlike any other zoning district, the Intensive Use District does not contain any Permitted Uses. Once an area is zoned an IU District there are no uses allowed within that district, unless a Special Exception is granted by the BZA. If a special exception is granted by the BZA, that approval can have a condition attached allowing the current land owner/petitioner to hold that special exception. If the petitioner decides to sell the land or operation, the new owner would be required to request their own special exception to continue the use or to change/expand the use. The Tam's have three (3) months to record their commitments, before the zone map amendment will take place. If the BZA makes a negative decision and the Tam's do not record their commitments, the proposed site will maintain its classification of an AG District.

The confined feeding operation would contain two 4,000 head hog finishing houses. Each finishing house would receive the hogs at approximately forty pounds (40 lbs.) of weight and would ship them out at approximately two hundred and sixty pounds (260 lbs.) of weight. Casi presented an aerial view of the proposed site and its surroundings (see attachment A). The picture shows the town of Fulton's incorporated limits and also indicates the surrounding districts such as Industrial (IN), Residential Cluster (R1), Park (PR), and General Commercial (GC). Another aerial view presented, indicates where the proposed site is located, with a black box and x, and all of the homes within a half-mile radius of the proposed facility, with a circled x (see attachment B). The blue lines on the aerial view represent the study from Purdue University that all of the BZA members received in the mail. Don Towne, County Surveyor, drew the half-mile radius to scale. A separate aerial shows that Mill Creek sits approximately half (1/2) a mile from the proposed site (see attachment C). The operation has the capability of having three full "turns" per year, (three cycles, each finishing out 8,000 hogs), but the industry average is between two and two and a half turns per year. Each finishing building will have a concrete manure holding pit located underneath each building. The engineering designs show that the manure holding pit can provide 348 days of manure storage. Industry studies have shown that these pits, on average, have the storage capability of up to 14 months due to technological advances in the water supply system within the actual buildings. The manure will be pumped out of the pits once a year and injected into the application ground one time per year, in the late fall or early winter, at all possible times. Casi Cramer stated the County Commissioners and Plan Commission placed a commitment on the operation stating that all manure will be injected, except in emergency situations. For the amount of manure generated from the operation, the Indiana Department of Environmental Management (IDEM) requires Mr. Tam to have approximately 471 acres for distribution. IDEM, using agronomic rates, calculates the amount of acres necessary for the application of manure generated. Mr. Tam currently has a total of 890 acres of applicable ground to spread manure on. These applicable grounds are either owned by Mr. Tam, or placed on a manure application contract with Mr. Tam. Casi presented a plat book picture showing where all of the application areas are located in black (see attachment D). According to IDEM's regulations Mr. Tam must stay at least five (5) feet from drainage inlets, fifty (50) feet from wells, and twenty-five (25) feet from surface water when applying the manure by injection. There are no application setbacks, if injecting near public roads and property lines. By commitment to the Plan Commission and County Commissioners, Mr. Tam must have composite soil samples from

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

each field used for manure application collected and analyzed every two years. A private analytical laboratory, qualified to analyze soil nutrient content and soil properties, will analyze the composite samples. At a minimum, soil samples will be analyzed for Nitrogen, Phosphorus, Potassium, and pH. IDEM regulations also require Mr. Tam to collect composite samples from each below-building concrete manure storage pit, during agitation and pumping at the time of land application. Multiple samples (5-10) will be collected from the concrete manure storage pit, during pumping and analyzed by an analytical laboratory. At a minimum, these manure and wastewater samples will be analyzed for available Nitrogen, Phosphorus, Potassium, Moisture Content, and pH. These samples will be collected annually prior to the injection of the manure. The Fulton County Zoning Ordinance requires that a buffer yard be installed on any property located in the Industrial District (IN) or the Intensive Use District (IU). The following buffer standards shall apply: The developer or owner of the subject property is responsible for installing the Buffer Yard; The adjacent property owner shall not have to participate in installing the Buffer Yard; An additional ten (10) feet of setback shall be required in addition to the normal setback on the yard(s) abutting the zoning district; One (1) deciduous canopy tree planted a minimum of every thirty (30) feet, or coniferous every twenty (20) feet; All trees must be planted within five (5) to fifteen (15) feet from the property line and on the subject property; and All trees must have at least a one and one-half inch (1 1/2") caliper, be properly maintained, and be replaced if the tree dies, is diseased, or is damaged from natural causes. The actual site drawing (see attachment E) shows that Mr. Tam's operation will have a rear yard and side yard setbacks of fifty (50) feet plus ten (10) feet of buffer yard. Mr. Tam's operation will sit approximately 1000 feet off of County Road 300 West; the required front yard setback is 150 feet off of the Right-of-Way (ROW). Casi Cramer noted that with this particular petition the Board would not be looking at property lines, but rather the actual IU District. Casi explained there would be absolutely no room for expansion on the approximate seven acres that was rezoned to an IU District. She further explained, if Mr. Tam would ever want to expand the operation, he would be required to go through the Zone Map Amendment procedure to rezone more land, and would have to go in front of the BZA again to ask permission. Casi stated that the Plan Commission, during their April 8, 2002 meeting voted by consensus to amend the ordinance to require any petitioner requesting a Zone Map Amendment from any district to an IU District for the purpose of locating a confined feeding operation within Fulton County have a maximum number of 3,600 animal units. Mr. Tam's proposed confined feeding operation has a maximum capacity of 8,000 hogs, or 3,200 animal units, on site at one time. IDEM requires any waste management system to be setback at least one hundred (100) feet from on-site water wells, property lines and public roads. There will be approximately 205 feet between the two hog finishing houses. The proposed operation would sit within sixty (60) feet of Mr. and Mrs. Serald Tam's property line. Mr. Serald Tam wrote a letter stating that the proximity of the confined feeding operation to this property line is not an issue with him (see attachment F). Bryan Tam noted, in his IDEM application, the area around the buildings will be backfilled and graded to divert runoff from pastures and cropland away from the treatment/control facility. The proposed location of the production buildings and waste treatment control structures will be sitting on a Markton (MaA) soil type, which has a seasonal water table about one to three feet below the ground surface. A perimeter tile will be placed around the buildings, which will help manage the seasonal water table at or below the concrete below-building manure storage pits. Attachment G shows where IU District Boundary is located and where the proposed area for the mortality building would be located. The mortality building will be located beyond the crest of the hill so that it will not be visible from County Road 300 West. It is far enough away from the facility to address any potential health hazards associated with the service. The mortality building will be enclosed with some type of screening and will have a door that latches to keep animals away from its contents. There currently

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

is a stand of trees to the west of the proposed facility. The existing stand of trees and the required buffer plantings will act as a windbreak, helping to keep the odor and dust down, as well as a visibility barrier from the surrounding area. Attachment H is a letter from TDM Farms, regarding the preferred path of truck traffic. Mr. Tam requested that TDM direct all truck traffic down State Road 114 to County Road 300 West to address traffic concerns of surrounding homeowners and reduce the impact on County Roads 600 South and 250 West. TDM Farms has agreed to direct all of their truck traffic down State Road 114 to County Road 300 West, unless unforeseen problems occur with this route due to weather or construction. A total of approximately 16,000 – 24,000 head of hogs could be transported to the facility, raised, and then transported out of the facility per year. This could require approximately 96 – 144 loads of growing/finishing hogs to be transported by semi trailer per year. Approximately 187 – 280 semi trailer loads of feed per year could be delivered to the facility. This calculates to approximately 3 – 5 loads delivered per week. An existing private tile, which ties into Mill Creek, lies between 116 feet and 255 feet to the south of the proposed facility. There are two subsurface drainage tile surface intakes that lie between 255 feet and 285 feet from the proposed facility. Attachment I displays the closest residences surrounding Mr. Tam's proposed IU District. Casi Cramer explained there are four houses located within .26 and .28 of a mile (one residence belonging to Mr. Tam's parents), two residences within .35 and .36 of a mile, and two residences within .45 and .46 of a mile from the proposed IU District. The eight residences surrounding the proposed IU District lie within .54 and .86 of a mile and the remaining seven lie between 1 mile and 1.33 miles in distance.

Casi noted that the Plan Commission recommended commitments to the County Commissioners regarding the actual IU District, stating that the commitments will follow the land not the owner. Therefore, if Mr. Tam sells the land zoned as an IU District, those commitments will stay with the land and the new owner will have to follow the same procedure Mr. Tam was required to follow. Casi read the recommended and approved commitments that will be attached to this particular IU District: 1) Improvements needed to the roads, if any, may be set and determined by the County Commissioners; 2) All semi traffic needed for the operation will utilize State Road 114 and County Road 300 West, except for during emergency situations; 3) The two (2) field risers approximately 200 feet to the south of the IU District will be plugged during the pumping of the manure pits; 4) The existing shallow well must be sealed; 5) All manure will be injected except in the emergency situations; 6) The Plan Commission has access to all Indiana Department of Environmental Management (IDEM) required records contained on site; 7) Soil tests on the application areas and facility site will be completed at least every two years and the manure will be tested at least once a year prior to injection; 8) The stand of trees located to the west of the IU District is to be left undisturbed except for normal logging practices approved by a qualified forester; and 9) A Third Party Review must be completed on any new spreading fields equaling a change of twenty-five percent (25%) within a five year period, from the original IDEM Manure Management Plan, the operator may not spread on ground more than two (2) years in a row if it was not included in the original IDEM Manure Management Plan, and the operator must notify the Plan Commission Office whenever they change spreading fields. Once the following commitments are recorded in the Fulton County Recorder's Office the IU District will become effective.

It is the recommendation of Plan Director, Casi Cramer, that if the BZA approve the request for a special exception to allow the placing of a confined feeding operation (CFO), containing more than 1,200 units of hogs, within the Intensive Use District (IU), which is comprised of approximately 7 acres of the tract of land located behind 6170 250 West, Rochester, IN (tract totals approximately 158.2 acres), with the following conditions: 1) Mr. and Mrs. Bryan Tam exclusively hold the special

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

exception to own and operate the confined feeding operation (CFO) containing more than 1,200 units of hogs within the above stated IU District; and 2) No more than 8,000 head are reared within the above stated IU District at one time.

Chairman, Mark Martens, asked if there was anything Mr. Tam would like to add at this time regarding his petition. Bryan Tam stated he and his wife started this project in October 2000 and feels they have tried to address every issue that has been raised regarding the operation. The Tam's feel that they have willingly cooperated with the Plan Commission, County Commissioners, and the Board of Zoning Appeals.

Mark Martens then asked for questions from the Board to the staff or petitioner. Joe Wegner asked if Casi Cramer, Plan Director, could clarify how the ground would be graded away from the buildings for containment. Casi Cramer said her understanding is that the entire pit will not be underground. Casi directed the question towards Michael Veenhuizen, Livestock Engineering Solutions, who is Mr. Tam's Engineer. Michael Veenhuizen explained the grading, referred to in the proposed IDEM application, is to direct any uncontaminated surface water, rainfall, and drainage away from the waste structures or the concrete tanks. This will help keep the rainfall separate from the processed wastewater and no excess water will be getting into the storage structure causing the volume of the tanks to rise. Joe Wegner questioned if there would be dykes placed around the facility to force containment. Michael Veenhuizen stated they feel dykes are unnecessary due to the fact they will not be collecting or containing any type of contaminated rainwater. Joe asked if the quote given by Casi regarding the amount of grain and hog loads that would be delivered to the facility was for the entire year or just for one load. Casi explained the quote she gave was a range. A total of approximately 16,000 – 24,000 head could be transported to the facility, raised, and then transported out of the facility per year. This could require approximately 96 – 144 loads of growing/finishing hogs to be transported via semi trailer per year. This is assuming one incoming semi trailer load equals 1,000 head at 40 pounds each and one outgoing semi trailer load equals 200 head at 260 pounds each. Casi further explained that approximately 187 – 280 semi trailer loads of feed per year could be delivered to the facility (assuming one semi trailer equals 60,000 pounds and one hog consumes approximately 700 pounds of feed during its life span). This calculates to approximately 3 – 5 loads delivered per week. Dan Walsh questioned Michael Veenhuizen about the depth of the concrete manure storage pits. Dan said he read somewhere in the report that if they take the land and excavate it down, it will be four foot in depth and then they will be placing the spill up against the walls of the concrete manure storage pits. Michael Veenhuizen stated that the excavation would be approximately four to five feet in depth and that flat or spill would then be used to backfill, which would raise the building up above the existing ground level. Mark Martens asked Michael Veenhuizen to explain the fan system that would be installed in both hog houses. Michael Veenhuizen said there are four rooms in each hog house, which are set up in a quadrant with two rooms side by side at each end of the building. There will be five fans in each of these rooms, which means there will be ten fans on each end of the building. Mark questioned what size diameter the fans would be. Michael stated that the pit fans along the sides of the building will be approximately 24 inches in diameter and the wall fans will vary from 24 inches to 48 inches in diameter. He explained the reason for the variation is the phase or step ventilation requirements they need between the cold weather and hot weather. Mark Martens noted that the fans would be anywhere from two foot to four foot in diameter and there would be approximately 20 fans pointing north and 20 fans pointing south. Mark also noted that the pit fans on the sides of the buildings would then be two feet in diameter. Michael Veenhuizen explained the pit fans would be anywhere from 18 inches to 24 inches in diameter and there would be six fans on each side of the buildings.

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

These pit fans would be located at ground level. Mark Martens asked how high up the fans would be from the original lay of the land on the ends of the building. Michael Veenhuizen said those fans would be about two feet higher than the new grade and if they backfill three to four feet than the would be roughly five to six feet from the original lay of the land. The pit fans would then be roughly three feet above the original lay of the land. Mark questioned how the mortality building would be set up and what would be done to keep other animals out of the building. Bryan Tam stated it would be screened in with fencing. Mark asked what the diameters of the mortality building would be. Bryan said the mortality building would be approximately 10 x 10. Mark questioned who the owner of the hogs would be and who would be purchasing the feed. Bryan Tam explained that TDM Farms would be the actual owner of the hogs and would provide the feed. Mark asked if there was a representative from TDM Farms present. Bryan stated yes, Jim Erickson, from TDM Farms was present. Mark questioned Jim Erickson about where they would buy the feed. Jim Erickson explained TDM Farms owns a building in Flora, Indiana and the feed will be mainly coming from that building. Jim stated TDM Farms sometimes uses Macy Elevator and a company in Portland, Indiana to mix and make the feed. Jim also said that TDM Farms just buys from whoever can give them the best price. Joe Wegner questioned what the Tam's would own in the proposed operation. Bryan Tam explained he owns the buildings and manages them. Joe asked if Bryan had any input on where the grain was purchased. Bryan stated, no, he did not have a choice on where the grain was purchased. Joe questioned whether or not Bryan had a choice to close down his operation if he wanted to, or felt the need to. Bryan replied, yes, because he owns the buildings. Joe inquired about the well near the operation and whether or not Bryan had every thought of using that well as a monitoring well. Bryan Tam said no but he and his wife were thinking about pulling their own samples out of the observation tile, which surrounds the buildings, and having them checked. This is for Mr. and Mrs. Tam's own satisfaction; it is not a requirement by any of the Boards, since they will be the family living closest to the operation. Bryan stated pollution is a major concern of his and his family's. Joe Wegner questioned how far under the ground the observation tile would be placed. Bryan Tam stated they would be even with the bottom of the pits, along the edges, so if there is any leakage from the pit it will show up in the tile first. Mark Martens asked if the perimeter tile would be sitting directly below the pit or lower than the pits. Michael Veenhuizen stated the recommendation is to place the tile within two to four feet of the exterior wall and within one foot of the floor elevations. Joe Wegner questioned whether or not the water tests taken by Mr. and Mrs. Tam would be available to the public. Bryan Tam said it is not a requirement by IDEM to conduct the tests therefore the results will be kept in his files. Joe stated then that Bryan would know the information but his neighbors may not. Bryan Tam replied, yes, he would know but his neighbors might not. Mark Martens asked if the Tam's were currently living with Mr. Tam's father, Sherald Tam. Bryan stated they are currently renting outside of the town of Fulton, but are planning on breaking ground for their new home on the north side of the stand of woods near the proposed operation located on 300 North. Mark asked Casi Cramer to put the aerial view back up on the overhead projector that shows all of the homes within a half-mile radius correlating with the results from the study conducted by Purdue University. Mark inquired who had drawn the results onto the aerial and if they were present for questions. Casi Cramer said Don Towne, Fulton County Surveyor, drew the results from the study onto the aerial and he is present. Mark Martens questioned when Don was drawing the results from the Purdue study, if he was using the chart that was provided with the study. Don Towne explained he blew the Purdue chart up to a scale that he had an aerial, which it could be overlaid. Mark asked Don Towne what his thoughts were when he was looking at the graph and the chart. Don stated that the chart seemed backwards to him. Mark said it seemed backwards to him also and he thought that the blue lines should have been going the opposite way of how they were drawn. Don Towne explained, you would think that the lines are

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

supposed to go the opposite way, but Purdue University had a north arrow on their study map. Mark Martens explained the blue lines on the aerial are supposed to represent the area where the wind flow would be going. Dan Walsh thought he had read in the report that the results or records on the observation tile would be available for the Plan Commission Office to view. Bryan Tam said his records required by IDEM would be available for viewing by the Plan Commission Office. Mark Martens explained if the Board feels they need to see the records of results from the observation tile, which Mr. and Mrs. Tam are conducting on their own, then they can make that a requirement or condition during their motion. Mark Martens asked for any further questions from the Board to the staff or the petitioner.

Being no further questions at this time, Mark entertained a motion to open the Public Hearing. Joe Wegner moved to open the Public Hearing. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh, Debbie Barts, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark Martens then opened the floor for those people in favor of the petition. He asked all those speaking in favor to please rise and state their name, address, and reason for attending the public hearing. Each person speaking in favor of the petition will have a maximum of ten (10) minutes to speak to the Board. David Sommers (Kewanna, IN) said he highly recommends the approval of the proposed confined feeding operation. He stated he is a pork producer in Grass Creek, Indiana and has a farrowing operation. David explained he is producing approximately the same number of hogs per year, as Bryan Tam would be finishing. David feels that Bryan Tam has “jumped through all the hoops” that IDEM, the Plan Commission, the Commissioners, and the BZA have required of him. He stated that Fulton County does have some of the stiffest rules in the State of Indiana as far as zoning rules or trying to get a building such as this passed. David noted that IDEM is very extensive. He brought with him a spot check report that shows IDEM did make periodic spot checks on his buildings and on the IDEM requirements for manure and soil testing. David said to be able to raise pork you have to be out in the country and some people may not want their homes sitting close to the operation but the pork producers need to have an area or place in this county where they can produce. David stated 8,000 head of hogs is not uncommon in the industry and it is not considered a hog factory, it is considered a good-sized family farm. David would hate to see the Board turn this down because he feels it is the only way family farms can stay competitive, cost effective, and efficient in the industry. David stated he is in total support of Bryan Tam and his operation. Gerry Hizer (Wayne Township) stated, he also is a pork producer, along with his two sons that help with the operation. Gerry said he went through the IDEM procedure for his operation in 1998. He explained during that time IDEM was preparing new rules for these confined feeding operations. Gerry said a Think Tank made up of several educated people comprised these rules. He noted that once these rules and regulations were put in effect by IDEM a lot of the pork producers left their operations. Gerry explained the reason for that is probably because the operators did not have the permits they were already supposed to have and/or it cost too much money to stay within the regulations. Gerry stated the thing that worries him, is that Fulton County is letting a selected group of people within the county tell them that they are smarter than all of the people placed on the Think Tank, which contained the education for these operations. He feels the county needs to look at all of the people and industries within the county that it will help economically. Gerry explained the operation will not only help pork producers because the operation will need corn, meal, and a certain amount of labor. Gerry said it is very costly as a taxpayer to build one of these buildings and that is the reason no one is building. He stated Bryan Tam’s operation is going to be controlled stringently and he does not understand why the grain

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

farmers do not have to jump through the same hoops as Bryan. Gerry explained the next step Bryan Tam will probably take is grid sampling of his soils for his own information so that he knows what his nutrient content is prior to application and after. Gerry stated there are people out in the county operating businesses that he may not agree with but at least they are out there trying to make a living and that is all the pork producers are trying to do. Tom Smith (745 W 700 N, Rochester, IN), Fulton County Farm Bureau Chairman, stated Bryan Tam's facility is going to be one of the finest in Fulton County that has gone through "all the hoops and technology". He further stated if the pork producers cannot build operations like Bryan is proposing, then what can they build. Tom said he is very fearful for agriculture in this country because so many restrictions are being put on these operations that make it very difficult to get approval. Tom feels that Bryan Tam has cooperated, as far as he can see, well beyond what is required of him to do. Tom stated Bryan's operation will be one of the safest operations in Fulton County due to the fact that it is new and will be run under the new rules and technology, not under the old rules. Julia Tam (Bryan Tam's wife) said she hoped that the neighbors and the community finally realize what they have been through trying to get this operation approved. Julia stated within the last 17 months that they have been trying to get their operation approved, they have done everything in their power to speak with, exchange information, answer questions, ask questions, and clarify the issues that have raised from everyone. Julia hopes that all of those present for Bryan's petition will tonight have a better understanding of what will be happening with the operation and will feel more comfortable with it when they leave. Julia stated she was for the operation. Dale Herrold (4701 W 600 S, Kewanna, IN) said the Plan Commission wrote the rules and Bryan Tam met them, the Plan Commission changed the rules and he met those. Dale feels Bryan Tam has done everything that has been asked of him and should be allowed to get started with his operation. Dale noted that Bryan could have already had his buildings up and receiving income from them. Jim Erickson (2829 State Road 114 W, North Manchester, IN), representative from TDM Farms, said he is in favor of the confined feeding operation because it gives the operator the chance to stay at home, on their own farm, and earn income at the same time. Jim stated it gives the family farms a chance to have a son or daughter come back from college or whatever and join the operation, if they so desire, so they do not have to find work somewhere else. Linda Shanelove (1135 Old U.S. 31) stated she is a Fulton County resident and a Miami County business owner. She noted that her business deals with five different counties and from her experience some of the biggest operations have the best-run facilities and the smaller facilities have problems with pollution/contamination. Linda said she is in favor of all of the rules and regulations that all the counties have put in place because it is preventing the facilities from having pollution/contamination problems. Linda stated she is in favor of the Tam confined feeding operation. Kevin Smith (4107 W 400 N) stated he is in favor of the Tam petition and he feels that Bryan should be allowed to get his operation started. He noted that he is a corn grower in Fulton County and hogs eat a lot of corn. Kevin wants to show his support to Bryan Tam and his family. Joyce Zartman (2227 E 600 S) said she is in support of the Bryan Tam petition. She stated she is very thankful to be able to live by a milk farmer down the road, hog farmers to the west, and she is appreciative that Fulton County still has men and women who continue farming. Joyce said she would hate to see that go away after they have met all the requirements. Joyce noted she has known Julia Tam for quite some time and she is a very protective mother, so if she saw any danger with this operation she would not allow it. Joyce wants the Tam's to know that there is still support in the county for them. Scott Starr (Logansport, IN), lawyer representing the Tam's, stated as a lawyer practicing in business about agricultural economics in small rural Indiana, his law firm in Logansport is contacted frequently by large out of state corporations, which are seeking their assistance. Scott explained this assistance could be for modernizing, purchasing, or building facilities here in Indiana. Scott said it is sad to see the local family farms be "gobbled" up by huge national

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

agricultural conglomerates and he should not complain because they give him business. Scott stated when he got the phone call from the Tam's stating they wanted to have a family farm operation to make a living in Fulton County, it seemed to him that it should be permitted. Scott said it seems to him the counties are running their local people out so that the agriculture is actually being taken over by large corporate conglomerates from thousands of miles away. Scott feels the Tam's have gone far beyond their call of duty to make sure that their operation is a state of the art operation, so that it not only complies by the laws, but also surpasses the laws. Scott stated it seems to him if the Tam's are not granted their request that the family farms in Fulton County ought to decide that they cannot do business in this county anymore. Dick Moss (4330 Eel River Road, Peru, IN) said he is an animal waste applicator and he is in favor of the Bryan Tam petition. Jeff Eckrote (Macy, IN) stated he owned a set of buildings just like what the Tam's are requesting and the company they feed for is TDM Farms. Jeff said you would not find a company that will care as much about the hogs, the facilities, and the environment as TDM Farms (Herrings) does and he is in favor of the Tam's having their facility. Dave Emery (4158 W 1350 S, Macy, IN) said he is a grain farmer in Fulton and Miami County. He currently takes the manure from State Representative, Bill Friend's, confined feeding operation and spreads it on his fields. Dave explained he is glad to get the manure from Mr. Friend's facility because it is more beneficial to the soil than commercial fertilizer on the whole. Commercial fertilizer is not tested nearly as much as manure. Dave stated, farmers cannot be guaranteed that industries are not sticking heavy metals into the commercial fertilizer indirectly. Dave stated he is in favor of the Bryan Tam petition. Michael Veenhuizen (2925 S Honeycreek Road, Greenwood, IN), engineer representing the Tam's, stated he is in favor of the Tam petition. Michael said he is in favor of several agricultural and livestock enterprises in the state of Indiana and Fulton County and the surrounding counties. He is confident that the information, testimony, and facts that have been presented should support a positive decision. He noted that one of the facts available to the Board was an Air Influence Model that has been created by Purdue University. Michael stated he could answer why it seems the blue lines on that chart (attachment B) are reverse. The model takes into effect wind direction, topographic relief, slope, and other factors other than just wind direction. If you study the factors of that location you will find that air range also has an influence on the model, which Purdue University utilizes along with Minnesota and Iowa State Universities. Michael explained based on the model there is minimal impact on the community. Michael said another factor is the buffer yard plantings that are required to be placed around the buildings, which will have a dramatic and positive impact on air emissions and air movement from the site. Michael Veenhuizen feels that, in essence, the Fulton County Zoning Ordinance and requirements are going to provide the proper protection for the health and safety of the community. Michael stated this particular building would be a state of the art building. He explained these buildings are designed and constructed to meet/or exceed all of the Natural Resources Conservation Services standard specifications. The Natural Resources Conservation Services is the federal agency that sets those standards and cooperates with protection agencies in helping set up new uniform strategies for confined feeding operations. Michael Veenhuizen said in reference to the concrete pits, they put water seals in every tank, which helps prevent leaks, cracks, and corrosion of the concrete. He obtained a sample of concrete from IDEM, which came from a 29-year-old concrete manure pit and there was no corrosion within that tank. Michael pointed out that Bryan's proposed facility is surrounded by agricultural land and has been rezoned for 7 acres to meet, and be, in compliance with the Fulton County Zoning Ordinance. He explained the actual "footprint" of the proposed facilities would only be approximately 3.5 acres and a traditional farmstead will consume 3-7 acres. He stated it would be a natural enhancement of the area. Michael Veenhuizen said he had the privilege of seeing some of the information that was printed in the local newspaper and some information that was passed out on an individual basis regarding pollution of confined feeding

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

operations. Any industry that abuses or misuses the technology available to them is a risk of pollution. Mr. Tam has approximately twice the acreage required for affective application using agronomic rates. Michael Veenhuizen explained that the application of the manure, from 8,000 hogs, would amount to a quarter to three tenths of an inch of application per acre not feet or several feet of flooding the area. He further explained due to the fact the manure will be applied by injection helps prevent runoff and potential odor. Michael Veenhuizen stated this proposed operation is a major step forward from 1997, when there was no record keeping and no accountability. Wayne Bode (4750 W 300 S, Kewanna, IN) said he is a grain farmer and there is a large hog operation a mile and a half to the north of them and one two miles to the south. He stated he has never had a problem with either one and with the strict rules that are being placed on Mr. Tam's operation he feels safe saying go for it. Harry Richter (4801 State Road 25 S, Rochester, IN) feels the proposed confined feeding operation ought to be passed. Mark York (4738 W 800 N, Roann, IN) stated he also was in favor of the proposed confined feeding operation. Mark Martens then asked for anyone else in favor of the petition.

Being none, Mark Martens asked for those opposing the petition to please rise and state their name, address, and reason for attending the public hearing. Brian Bonnell (6770 S 250 W, Rochester, IN) asked if he could present an overhead to the Board of a "revised" map indicating where the nearest dwellings are located (see attachment J). Brian stated the map that was presented to the Board by Casi Cramer, Plan Director, only shows 19 homes within a mile and half range of the facility and that is inaccurate. Brian said there are actually 48 homes within a mile and half of the proposed facility. He noted that in the May 13, 2002 Plan Commission minutes it states there are four houses within .26 and .28 of a mile, two residences within .35 and .36 of a mile, two residences within .45 and .46 of a mile, four residences within .54 and .86 of a mile and 7 between 1 mile and 1.44 miles of the proposed facility. Brian stated Casi's map was accurate with his up to the half mile mark where he found an additional six residences within .54 and .86 of a mile, one resident within .98 of a mile, and an additional 22 residences within 1 mile and 1.5 miles. This meaning that Brian Bonnell found 29 additional residences within the surrounding area of the proposed facility that were not indicated on the first map presented. Brian stated he is not in favor of the potential odor, but that is part of the cost from living in the country. Brian is concerned that the proposed facilities will contaminate the surrounding residences' water and will possibly suck their wells dry. He is concerned with the safety of his family and neighbors. Randy Carr (2481 W 600 S, Rochester, IN) said he is approximately half a mile from the proposed site and he has information that he would like to present to the Board. Randy passed out a study from Missouri University regarding the impacts of animal feeding operations on rural land values (see attachment K). The study states in the key findings that an average distance to the nearest Confined Animal Feeding Operation (CAFO) was 2.2 miles. The study also says that the proximity to a CAFO does have an impact on the property values. Based on the averages of collected data, loss of land values within 3 miles of a CAFO would be approximately \$2.68 million. Randy Carr also presented the Board with a Realtor Statement signed by some of the realtors from Fulton County, all located in Rochester (see attachment L). The Realtor Statement states "It is my belief as a realtor licensed by the State of Indiana, that the establishment of an 8,000 head hog Confined Animal Feeding Operation, would restrict the use of, or devalue the surrounding land" and it gives the location of Bryan Tam's proposed facility. Randy presented a Realtor Statement from Cass County regarding a 4,000 head hog CAFO stating it "would restrict the use of, or devalue the surrounding land" (see attachment M). Randy said his major concern is with the possible contamination of the water. Randy noted that the St. Joseph River had to be closed down because of e-coli, which came from illegal waste and animal waste. Tom Culp (6237 S 250 W, Rochester, IN) stated he is directly across from the proposed site and he

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

had information to present to the Board. Tom said his biggest concern is what is going to happen if the well water does become contaminated. Tom noted that North Carolina, Ohio, and Illinois all have major lawsuits against them right now, regarding the contamination of drinking water. He said that the government is starting to get involved with these types of situations and the EPA is starting to change some of their laws regarding air and water pollution. Tom feels people do not grasp the difference between a 200 head hog operation and a 8,000 head hog operation. Tom stated he is against the proposed confined feeding operation (see attachment N for his information). Tammy Ryan (4646 S 225 W, Rochester, IN) stated that hog waste contains large amounts of nitrogen and phosphorous, which escapes into the air during field application of animal waste. Those nitrates can drain from the fields into waterways if over applied, or applied when plant needs are low. She noted that a facility with 10,000 head of hogs produces as much waste in a single day as a town with a population of 25,000 people. Tammy said according to IDEM (1994-1995) more than 60% of Indiana's population relies on groundwater for its drinking water supply and nitrate levels in the groundwater are dangerously high in some areas of the State. Tammy gave an example of this situation in Delphi, which is located in Carroll County, where the county leads the State in hog production. The Delphi mayor wrote to the Water Pollution Control Board that the city has been exploring for new wells since 1996 and only two sites were discovered. One site had significant nitrate contamination and the second had significant bacterial contamination, including e-coli, contamination of both sites contributed to regional agricultural activities. According to IDEM much of Indiana's drinking water supply is vulnerable of pollution due to the presence of the sand and gravel outwash plain, which is a type of sensitive geology composed of sandy soils overlaying the aquifer. Twenty-two States that categorize specific types of agricultural pollution concluded that animal waste pollutes the following: 35,000 of the river miles that they affect, animal manure is the greater contributor than point sources to in-stream nitrogen and 1,802 or 88% of the 2,056 watershed outlets in the United States, based on a national effort by the US Geological Survey. In Milwaukee, Wisconsin in 1993, there was contamination of the public water supply, which caused more than 100 deaths and an estimated 403,000 illnesses. In Lagrange, Indiana, the county Health Department identified a cluster of women living near hog operations who had experienced miscarriages after drinking water with high levels of nitrates inside their wells. Seventeen States have experienced groundwater contamination from livestock feed lots. A North Carolina study of 1,600 wells adjacent to hog and poultry operations show that 10% of the wells tested were contaminated with nitrate above the drinking water standards and 34% were contaminated with some level of nitrates. Also in North Carolina, data inspectors found 1,293 violations and deficiencies at hog factories, 900 of these violations were serious and included 86 discharges from waste lagoons, 221 instances of applying too much waste on the land, 585 cases where waste lagoons were too full, and 8 cases where health factors were in violation of State restrictions. Tammy Ryan stated recent studies in air quality show that odor and associated air pollution from hog factories are now being linked to human health effects. The National Institute for Occupational Safety and Health has issued warnings for several years to workers in animal confinement operations, it was found that 11% had asthma-like symptoms, one-third had a flu-like illness called organic dust toxic syndrome, more than half suffered upper-airway inflammation, and as many as 70% had some form of bronchitis. Limited studies have been conducted which also have found statistically significant increases in acute or chronic respiratory problems associated with residents near large-scale hog facilities. In Iowa, a study found neighbors of hog facilities had respiratory problems similar to those of workers in hog confinement operations. The tiny particles in dust can aggravate asthma, allergies, damaged lungs, carry viruses, or cause illnesses. Odors from large hog facilities also decrease neighbors' property values by as much as 30%. According to Peoria Journal Star, 1998, those living within 1.5 miles of an operation suffer a 30% loss, while those who live 2 miles away

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

receive a 10% loss. Tammy continued that studies have found odors from large hog operations can affect neighbors' health. A study in North Carolina found that people living near these facilities reported more fatigue, confusion, and less overall vigor than status control subjects. A more recent study by the University of North Carolina found that people living near large hog farms suffer significantly higher levels of upper respiratory ailments. The University of Iowa and Iowa State University conducted a study stating that hydrogen sulfide and ammonia had been measured near livestock operations in concentrations that could be harmful to humans. Hog waste applied to land contains 110,000 times more pathogens than human waste. Tammy Ryan concluded by saying she was opposed to the proposed confined feeding operation (see attachments labeled O for her information). A.J. DePyper (6690 S 250 W, Rochester, IN) stated he is one of the neighbors closest to the proposed confined feeding operation. He feels the operation is too big and too close to the residents living nearby. He noted if the facility was a half a mile or three quarters of a mile from any residents then it may be alright but not when it only sits a quarter of a mile away. A.J. said there is a major difference between agricultural use and intensive use. He stated that the study conducted by Purdue University shows that the wind will be blowing directly towards his property and he will be one of the worst neighbors affected. The water usage of the confined feeding operation scares him and he is almost certain his well will go dry. He said his property values would go down because no one wants to be that close to a confined feeding operation. He noted there would be 47 to 48 homes affected by this operation and that is not a minimal effect. A.J. DePyper handed out information to the Board members that came from the Purdue Agricultural Air Quality Laboratory, Iowa State University, The University of Iowa Study Group, and the State Legislation (see attachments labeled P). He explained, the Purdue Agricultural Air Quality Laboratory has conducted research that show viable bacteria beyond 800 meters and that is half a mile. A.J. said Purdue University has a website for odor based setbacks and it says that the setback should be anywhere from 2,600 to 3,100 feet. He explained that the active bacteria was tested in November and December with very cool temperatures, low humidity, and moderate winds which puts everything in their favor and the bacteria still went 800 meters. A.J. is afraid of what it will do during the summer. He stated Tom Culp and his family live down in the valley west of the proposed facility and he feels it will all settle down on top of the Culp family. A.J. DePyper feels like the county has failed to do the proper research. He noted the governor of Iowa requested that Iowa State and Iowa Universities conduct a joint study regarding Concentrated Animal Feeding Operations Air Quality Study. After the study was conducted Iowa passed a law right away that basically states there can be nothing within a half a mile from the concentrated animal feeding operations. The Senate Bill of Law shows some of the reports where they found that there was an increase of symptom clusters mainly with high upper respiratory symptoms among those living within 2 miles of the Swine Capitol. A.J. stated that his information shows intensive research that has been conducted regarding health risks with documented risks by medical and agricultural colleges and it has setbacks and regulations that should apply. He said he knows that Bryan and Julia Tam are good people and they would never do anything to jeopardize their safety, but he feels they were given bad information. He stated everyone keeps saying, "well you are in an agricultural district" but the county is talking about placing an intensive use district right in the middle of the agricultural district. A.J. questioned why the county is going to allow Bryan Tam to inject his manure in the fall when we know that it is going to leech down and go into the groundwater. A.J. DePyper stated he is opposed to the proposed confined feeding operation. Phil White (3783 E 400 N, Rochester, IN) asked if there was any significance for the use of the word unit, by this he is referring to animal unit. Casi Cramer, Plan Director, explained the way most counties deal with determining how many animals can be at a proposed site is they give, for example, a nursery pig a certain unit number and then they say you can have 1,200 units of animals. Casi further explained

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

the counties then have a chart that says a finished hog is four tenths of a unit etc. Phil White commented that he lives diagonally across the county from the proposed operation and until tonight he did not know that there were, that many pig farms in Fulton County. He said he could easily say, oh well, it is not going to affect him and not sympathize with the people who have to live near the facility, but he feels it will affect him. He explained it would affect him because if the county does not put their “clamps” on these operations or stop them then they will probably start moving in next to him and he is opposed to that and opposed to this proposed confined feeding operation. Frank Fugate (1125 E 450 N, Rochester, IN) said for the last eight years he has been hauling material and lumber to these hog facilities through the Midwest and accidents can happen and will. He stated if Mill Creek is lower than the area where the manure will be injected than it will leech into it. Frank questioned what would happen if an accident did happen, is there a back-up plan. Frank finished by stating he is opposed to the proposed confined feeding operation. Gary Sriver (789 S 1000 E, Akron, IN) said he is concerned with the health problems that may be caused by this facility and more so with the respiratory problems. He stated there have already been lawsuits filed on a few of the States regarding these respiratory problems due to confined feeding operations. Gary feels the bigger we allow these farms/operations to get there is going to be more chance for acquisitions by out of State corporations. He is concerned with the countries that are involved with the North American Free Trade Agreement (NAFTA) because there is a provision within the treaty that says if a company from Mexico or Canada would buy a confined feeding operation in any of the States in this country, none of the zoning laws (county, state, or national) apply to them. Gary said that means the EPA would have no control what-so-ever over any particular acquisition of a large confined feeding operation in Fulton County. Gary wants to know where the county stands on liability, for example, if one of the neighbors of a confined feeding operation has a respiratory problem and they can prove that it was caused due to the confined feeding operation, then they will sue the county, the Commissioners and the State. Gary stated he is not sure that he is against the proposed confined feeding operation, but he is not sure that he is for it either. Jim Hoyer (404 E Main Street, New Albany, IN), Statewide Farm Policy Coordinator for the Citizens Action Coalition (CAC) in Indiana, said he works on statewide farm policy issues for CAC and his work involves both federal and state farm issues geared toward keeping the family on the farm. He said the reason he was present is because some of the CAC members of Fulton County have voiced their concern regarding the proposed operation and he is here to speak in opposition of the petition. He asked if he could question Jim Erickson, representative from TDM Farms, about some information so that he is sure not to give the Board false information. Jim Hoyer said he talked to someone from the state government in North Carolina and they told him that TDM Farms was affiliated with Murphy Farms and he wants to know what the affiliation is. Jim Erickson stated there is no affiliation with Murphy Farms; he explained there are two divisions of TDM Farms, one of which is Hog Slat (the parent company) that manufactures equipment and builds buildings; Murphy Farms is a customer of the Hog Slat division. Jim Hoyer’s understanding of the proposed operation is that Bryan Tam is going to put up the buildings and own the buildings, but TDM Farms will own the hogs. He said it sounds like TDM Farms is the actual manager of the operation, since Mr. Tam does not have a choice where the feed comes from. He noted that TDM Farms operates a lot of farms in North Carolina, Northern Indiana, some of the farms in Northern Indiana are actually owned by TDM Farms (buildings, hogs, land, etc.), there are two farms in Carroll County where TDM Farms has 10,220 hogs in 45,000 layers, three farms in Wabash County have 12,000 hogs, one farm in Miami County has 4,000 hogs, and one farm in Cass County has 4,000 hogs. Jim Hoyer explained these are just the buildings and land owned by TDM Farms, so they are a very large corporation and they are corporate owned hogs. Jim said his organization works on saving the family hog farmers and works to preserve independent hog producers in the State of Indiana. Over the last 20 years; CAC has lost

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

two out of three of the hog farmers in Indiana and two thirds of the nations hog farmers have gone out of business due to the increasing corporate control over the hog industry. Jim stated, Smithfield is the largest active owner of hogs in the country, they own over 700,000 sows, they own enough hogs to manipulate market prices for independent producers. Jim explained what they will do is manipulate market prices down, drive independent producers out of business, and come take over that market. Jim said with the proposed confined feeding operation he does not see it as a way to preserve the family farms; this is the reason there are not family farms anymore because the corporations are raising the hogs, not the family farms. Jim Hoyer said with the proposed hog operation coming in the particular area that is proposed will definitely restrict the use of the land. He stated if he were a builder he would definitely not try to build any homes near an 8,000 head hog facility and think that they will sell for very much money. He further said that there are health issues that could be caused by the proposed operation which some of the other people in opposition have already discussed. Jim explained Iowa State University conducted a study that shows that bacteria are actually emitted from hog buildings into the air; the bacteria are anti-biotic resistant bacteria. He went on to say, because of that Iowa, has several counties within it where the Board of Health impose moratorium saying no more confined animal feeding operations over 1,000 animal units are allowed in the county. North Carolina, where TDM Farms is from, has put a ban on confined animal feeding operations and he believes that is one of the reasons these companies want to come to the State of Indiana. Jim disagrees with the corn farmers who say they will benefit from this operation because Mr. Tam cannot control where his feed for the hogs is bought, TDM Farms controls that and they will find the cheapest source. Right now the price of corn is already below farmer production cost and that's why these operations want to come here, for the cheap source of corn. Jim stated Minnesota has conducted tests that show hydrogen sulfide emissions contribute to the failure of confined feeding operations. Hydrogen sulfide can be harmful to people's respiratory systems especially in children and because of this Minnesota has started utilizing the Clean Air Act for confined animal feeding operations by monitoring the air emissions. John Robinson (Rochester, IN) said he heard one gentleman say he lived to far away to be involved, but John does not feel he is. John stated that Mill Creek belongs to everyone, and he is very concerned with that water becoming contaminated. He noted that Mill Creek runs throughout Fulton County so even if you live 10 miles from it you may be affected by it. John Robinson finished by saying he was against the proposed confined feeding operation. Tammy Bonnell (6770 S 250 W, Rochester, IN) stated she has nothing personal against Bryan and Julia Tam, but she is against the proposed confined feeding operation. Gib Foster (Mt. Zion area) said Iowa is his home State and every time he goes home to visit, he hears horrible stories about confined feeding operations. He stated anyone with a computer could get on the Internet and go to Hog Watch or CAFOs and read the stories about what is happening in Iowa. Gib finished by stating he was against the proposed confined feeding operation. Jerry Ryan (4646 S 225 W, Rochester, IN) asked if Greg Heller, BZA Attorney, could read again what the Board members had to agree with in order to approve the petition and he is against the petition. Chairman, Mark Martens, said he would have Greg Heller do that right before the Board members fill out their findings of fact sheets. Jerry Ryan said one of the gentlemen earlier had said that one of the Board members was a hog producer themselves and asked if that would be a conflict of interest. Jerry noted in the BZA's bylaws it states that, "No member of the Commission shall participate in a hearing or decision of the Board upon any zoning matter in which the member has a direct or indirect financial interest". Mark Martens stated if the Board felt that were the case then yes it would be a conflict of interest. Lori Carr (2481 W 600 S, Rochester, IN) stated she was against the proposed confined feeding operation. Mark Martens asked for any further comments opposing the petition. Being none, Mark opened the floor for rebuttal.

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

Bryan Tam said he and his family have been working on this project for two years and they have taken a lot into consideration regarding public safety. Bryan feels that they have addressed those issues to the best of their ability. Michael Veenhuizen, engineer representing the Tam's, stated he is familiar with much of the research that had been presented to the Board members, by the neighbors', and he feels it is important to keep in mind the differences between the conditions that this research was done under. Michael said the facilities that are proposed to be built here are similar to what are being done across the country. Michael noted there had been a lot of comments regarding potential spills and pollution risks. He said keep in mind that the manure will be collected in an underground concrete manure pit, so the worst case scenario spill will not be what we read about in the paper regarding the above ground earthen storage. He explained some of those bacteria released by emissions and pathogens would be monitored because the operation has to make sure their hogs do not get infected with any diseases. If it is something like a somatic disease, which there are very few of between pork and humans, this means that humans can catch disease from the hogs. Michael Veenhuizen stated he is in total support of Bryan Tam's confined feeding operation and he feels it is important to keep in mind what the facts are about this particular operation versus what we see across a wide cross section of the industry. Tom Culp said he had a question for the engineer. He said he is making it sound like the perimeter drain is one big safety field and the perimeter drain leads through the field and out into Mill Creek. If there were a spill it would end up in Mill Creek right or wrong? Michael Veenhuizen replied by saying if there is a leak there is the potential of that happening. Tom Culp stated so the perimeter drain is not a safety factor at all. Michael Veenhuizen said the perimeter drain is a function of the design and used in order to maintain the safeguards of the tank. Dan Walsh asked if there were shut-offs on the outlets for the perimeter tile. Bryan Tam stated yes there would be a shut-off within the tile observation riser built into the perimeter tile. David Sommers questioned whether or not it had been said that IDEM stated that there had never been any pit spills or leaks from concrete manure pits in the State of Indiana. A.J. DePyper said the neighbors' main concern is not the issue of whether the facility pits are going to crack. They are worried about the manure being over applied in this situation, the leeching of e-coli, the nitrates, the phosphorous, wells going dry, and the water table. Jim Erickson, TDM Farms representative, said that this facility does not have any layers like the gentleman was talking about earlier and he knows for a fact that TDM Farms owns 3 farms in Wabash County and 1 in Miami County. He stated that TDM Farms is a family owned operation that was started by a father and his three sons in North Carolina. He disagreed with the gentleman that said TDM Farms was pushed out of North Carolina because actually TDM has plenty of buildings in which to raise hogs. An unknown gentleman stated that TDM Farms claims to be a family owned business but so is Microsoft and Wal-Mart and they are large corporations. Tammy Rhine said in response to David Sommers question regarding reports of leaks or spills, according to the Indianapolis Star animal feed lots were responsible for 2,391 spills of manure in Indiana in the year 1997. Mark Martens asked for any further rebuttal.

Being none, Mark entertained a motion to close the Public Comment portion of the petition. Joe Wegner moved to close the Public Comment portion of the petition, #BZA 37-0402, Bryan Tam. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh, Linda Herd, Debbie Barts, and Mark Martens being in favor and no one opposing.

Mark Martens then differed to Greg Heller, BZA Attorney, to address the question regarding conflict of interest. Greg Heller said it is included in the BZA's Rules of Procedure because it is a State statute. It says, "No member of the Commission shall participate in a hearing or decision of the Board upon any zoning matter in which the member has a direct or indirect financial interest".

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

Greg said his understanding is that question was brought up and directed towards Debbie Barts who raises hogs, cattle, and is a grain farmer. Greg does not feel she has any direct interest in the Tam operation and even though she is involved with hog production that is not her only source of income. If Debbie Barts feels uncomfortable with making a decision, then she can declare that and excuse herself from the decision.

Mark Martens then asked if there was any Board discussion. Mark Martens said he wanted to know what kind of liability insurance Mr. Tam would be carrying on his confined feeding operation. Bryan Tam said he honestly had not even addressed that option yet. Mark Martens talked to Ron Withers who lives half a mile due east of Bill Friend's operation, which some Board members made an on-site visit to on separate occasions, and asked him if he felt like he had lost outdoor life, or quality of life. Mr. Withers responded he felt there was negligible loss of quality of life. Mark also spoke to another gentleman who lives almost a mile east of the Bill Friend operation and asked him the same question. This gentleman also responded that he had no loss of quality of life. Mark said they both were against the confined feeding operation, but they said they had no loss of quality of life. Mark Martens talked to all of the realtors in Rochester and talked to a representative and every one of them confirmed that there would be some type of negative impact on property values. They could not say to what extent the property values would decrease. Joe Wegner commented that he went on the tour of the Bill Friend confined feeding operation and stood within five feet of the direct force of the fan at the end of the building. Joe stated that he expected to smell substantial odor, but in actuality, the smell was not "real bad". He continued to say that at the time of his visit he was unaware of whether or not it was a good day, or a bad day, regarding the strength of the odor from the operation; but at that time the odor did not stop him from breathing or cause him to have any kind of serious problem. He also commented that initially he believed the odor would be the most substantial problem from this type of operation, but now his concern is predominately the water quality. Joe would like to see the motion state that all tests taken from the perimeter tile should be available to the Plan Commission Office. Joe said it is a part of farming to expect that things are going to happen, for example his neighbors are putting in a new irrigation system and it may affect his well, but he cannot stop them from doing it. Joe noted that he believes the person who owns land and farms it, should be able to do the type of farm business he chooses. Bryan Tam stated that he did not have a problem with sharing the test results from the perimeter tile with the Plan Commission Office along with his IDEM required records. Joe Wegner asked how often samples would be pulled from the observation tile. Bryan Tam said he and his wife were thinking about pulling samples once a year. Joe feels that once a year is not enough and it should be more like two to three times a year. Bryan said he had no problem with conducting the tests twice a year. Mark Martens said his biggest concern is trying to see how this is not going to be injurious to adjacent properties. He explained, after speaking to some of the realtors he realized there will be some impact on the adjacent properties, but also thought that it was too hard to define exactly how much of an impact would occur. He feels that every person has a right to sell his or her land to make a profit on it. Mark does not feel that by not granting the request, it would in any way take away Mr. Tam's right to farm on that property, or his way of living, it just may make it impossible to make this specific type of living on this specific property. Joe Wegner commented that on a previous petition, regarding a subdivision, one of his questions was what in fact was the farmer's right to have the Ag land around that particular area. Joe said it could be a poorly managed smaller facility, which creates more odor, and does more harm than this proposed 8,000 head hog facility. Dan Walsh questioned whether or not the Board should take Mr. Tam's right to do what he wants on his property; just because of possible negative impacts that are immeasurable. Dan said the neighbors' impact is something that he cannot measure or be certain will even occur, and he has a

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

problem with saying that it will definitely cause an impact to the neighbor's property values. Linda Herd agreed with Joe in saying that the perimeter tile should be tested twice a year and the records should be available to the Plan Commission Office. Dan Walsh and Debbie Barts both agreed with testing the perimeter tile two times a year, with the records available to the Plan Commission Office. Mark Martens asked for any further Board discussion. Being none, he entertained a motion regarding the petition.

Joe Wegner moved to approve the request for a special exception, on Docket #BZA 37-0402 Bryan Tam, special exception be approved with the added stipulation that water testing be done three times a year out of the tile drainage system adjacent to the proposed buildings, beginning with the first load of hogs, and every four months after and that the special exception is exclusively for Mr. and Mrs. Bryan Tam and no more than 8,000 head are reared within the stated IU District at one time. Dan Walsh seconded the motion.

As the Administrative Secretary was preparing the motion Mark Martens read aloud the four questions the Board members have to agree with in order to be able to give approval of the petition. 1) The proposed use will not be injurious to the public health, safety, morals, and general welfare of the community. 2) The proposed use will meet the requirements and development standards prescribed by the Fulton County Zoning Ordinance. 3) The proposed use will not corrupt the general purposes served by the Fulton County Zoning Ordinance and will not permanently injure other property or uses in the same district and vicinity. 4) The proposed use will be consistent with the character of the zone district therein and the Fulton County Comprehensive Plan.

The Administrative Secretary, Erica Ginther, read the motion aloud to the Board to make sure it was exactly how they wanted it worded. The motion is to approve the request for a special exception to erect a confined feeding operation consisting of two hog finishing houses which hold 4,000 head each with the added stipulation that water be tested three times a year from tile around the buildings, starting when the first load of hogs arrives, and every four months after that, Mr. and Mrs. Bryan Tam exclusively hold the special exception to own and operate the confined feeding operation containing more than 1,200 units of hogs within the stated Intensive Use District (IU), and no more than 8,000 head are reared within the stated IU District at one time. Joe Wegner stated he wanted to make an amendment to the motion. He said it would be that the water testing results meet the criteria set forth by the water standards as being acceptable and that first test being the criteria to which we bench mark against. Mark Martens noted since there was a second Joe legally needed to withdraw his motion. Joe Wegner withdrew his motion and Dan Walsh withdrew his second.

Joe Wegner moved to approve the request for a special exception, on Docket #BZA 37-0402 Bryan Tam, special exception following exceptions: 1) Test the water three times a year with the first test being the base test in which the other tests would be monitored against, any variance from that would be reported as IDEM results submitted with the IDEM records; 2) Mr. and Mrs. Bryan Tam exclusively hold the special exception to own and operate the confined feeding operation containing more than 1,200 units of hogs within the stated Intensive Use District (IU); and 3) No more than 8,000 head are reared within the stated IU District at one time. Dan Walsh seconded the motion.

The Administrative Secretary, Erica Ginther, read the motion aloud. The motion is to approve the request for a special exception, on Docket #BZA 37-0402 Bryan Tam, to erect a confined feeding operation, consisting of two hog finishing houses, which hold 4,000 head each with the following conditions: 1) Water testing be done three times a year out of the perimeter tile beginning with the

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

first load of hogs and every four months after that, testing of the first base test is what other tests are monitored against, any variation of test levels in the future need to be reported to the Indiana Department of Environmental Management (IDEM) and all tests should be available to the Plan Commission Office with IDEM reports; 2) Mr. and Mrs. Bryan Tam exclusively hold the special exception to own and operate the confined feeding operation (CFO) containing more than 1,200 units of hogs within the stated Intensive Use District (IU); and 3) No more than 8,000 head are reared within the stated IU District at one time. Mark Martens asked the Board if the motion was correct and everyone agreed with the motion. Mark Martens then closed the Public Hearing.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled Q). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Joe Wegner	Yea
Debbie Barts	Yea
Dan Walsh	Yea
Linda Herd	Yea
Mark Martens	Nay

The motion to approve the request for a special exception, on Docket #BZA 37-0402 Bryan Tam, to erect a confined feeding operation, consisting of two hog finishing houses, which hold 4,000 head each with the following conditions: 1) Water testing must be conducted three times a year out of the perimeter tile beginning with the first load of hogs and every four months after that, testing of the first base test is what other tests are monitored against, any variation of test levels in the future need to be reported to the Indiana Department of Environmental Management (IDEM) and all tests should be available to the Plan Commission Office with IDEM reports; 2) Mr. and Mrs. Bryan Tam exclusively hold the special exception to own and operate the confined feeding operation (CFO) containing more than 1,200 units of hogs within the stated Intensive Use District (IU); and 3) No more than 8,000 head are reared within the stated IU District at one time passed with four votes in favor and one vote opposing.

It is duly noted that the Board took a five-minute break.

IN RE: NEW BUSINESS

WILLARD MANNS  
DEVELOPMENT STANDARDS VARIANCE

Willard Manns, Docket #BZA 40-0602, Development Standards Variance. Mr. Willard Manns is requesting a development standards variance of 35 feet for the purpose of constructing a porch on the south side of his house (see attachment R). The home is located in an Agricultural District (AG) at 496 South State Road 14, Akron, IN. The property contains approximately 4.12 acres.

Casi Cramer, Plan Director, presented an aerial view of Mr. Manns' property, which shows the incorporated limits of the town of Akron (see attachment S). Casi explained the required front setback is sixty feet (60) off the right-of-way on State Road 14. The total right-of-way of State Road 14 is forty feet (40). In order for Mr. Manns to be in compliance with the Fulton County Zoning Ordinance, he would have to build his porch a total of eighty feet (80) from the center of State Road

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

14. The closest point of Mr. Manns house sits a total of approximately twenty-five feet (25) from the right-of-way of State Road 14. Casi said the porch would be twenty-nine feet (29) long and approximately eight feet (8) wide. Casi noted that Mr. Manns would have no problem meeting the side or rear yard setbacks.

It is the Plan Director's recommendation to approve the requested development standards variance of thirty-five feet (35) for the purpose of constructing a porch.

Mark Martens asked the petitioner if there was anything they would like to add. Mrs. Manns said Casi Cramer covered it very well. Mr. Manns' son stated the request was for nothing more than a porch to come out of the best part of the house.

Mark asked if there were any questions by the Board to the staff or petitioner. Being none, Mark entertained a motion to open the Public Hearing. Dan Walsh moved to open the Public Hearing. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Being none, he asked for any additional comments from the public or petitioner.

Being no additional comments, Mark entertained a motion to close the Public Comment portion of the petition, Docket #BZA 40-0602 Willard Manns. Dan Walsh moved to close the Public Comment portion of the petition, Docket #BZA 40-0602 Willard Manns. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark Martens asked for any Board discussion. Dan Walsh and Mark Martens both commented that Mr. Manns would not be able to meet the setbacks anywhere else on the house either. Linda Herd commented that the porch would be staying in direct line with the already existing home. Mark asked for any further Board discussion.

Being none, Mark entertained a motion regarding the petition. Dan Walsh moved to approve the request for a development standards variance, on Docket #BZA 40-0602 Willard Manns, of thirty-five feet (35') to erect a porch on his property, 496 S State Road 14, Akron, closer than the required front setback within the Agricultural District (AG). Debbie Barts seconded the motion.

Mark Martens then entertained a motion to close the Public Hearing. Dan Walsh moved to close the Public Hearing. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Linda Herd, Debbie Barts, and Mark Martens being in favor and no one opposing.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled T). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Linda Herd	Yea
Dan Walsh	Yea
Debbie Barts	Yea
Joe Wegner	Yea

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

Mark Martens                      Yea

The motion to approve the request for a development standards variance, on Docket #BZA 40-0602 Willard Manns, of thirty-five feet (35') to erect a porch on his property, 496 S State Road 14, Akron, closer than the required front setback within the Agricultural District (AG) passed with five votes in favor and no one opposing.

IN RE:                      NEW BUSINESS

JOHN DUEVALLE  
SPECIAL EXCEPTION

John Duevalle, Docket #BZA 41-0602, Special Exception. Mr. Duevalle is requesting a special exception for the purpose of operating an enclosed Auto Body Shop on his property. His property is located in an Agricultural District (AG) at 9701 South 400 East, Macy, IN. The property consists of approximately 9.3 acres.

Casi Cramer, Plan Director, presented an aerial view of Mr. Duevalle's property, which shows that his property is located in the southeastern most corner of Fulton County (see attachment U). Casi then presented another aerial view that shows a closer view of Mr. Duevalle's property and the existing building, which he would be utilizing for the business (see attachment V). Cass County is located approximately a third of a mile to the south of Mr. Duevalle's property and Miami County is directly to the east. His property currently contains a number of outbuildings, which Mr. Duevalle plans on utilizing, if he needs to, for his business. Casi spoke to Mr. Duevalle about the Fulton County Zoning Ordinance, PK-05, that states there can only be two unlicensed or inoperable vehicles within plain site of the road unless they are a minimum of two-hundred (200) feet from the front property line and a minimum of fifty (50) feet from the side and rear property lines. Mr. Duevalle assured Casi that it would be an enclosed body shop. It is Casi's presumption that if a special exception was granted for an enclosed Auto Body Shop, unless the BZA specified otherwise, that the above regulation would not apply to the business, but only to Mr. Duevalle's personal use. Greg Heller, BZA Attorney, said the regulation would apply to both Mr. Duevalle's personal use and the business. Casi noted that she asked Mr. Duevalle about painting and how often he would be painting. Some of the neighbors are concerned with the paint fumes escaping from the building. Mr. Duevalle stated very seldom would he paint an entire car and he might use one gallon of paint in three weeks. Casi explained as far as the parking regulations are concerned, Mr. Duevalle is in compliance with PK-02 due to the fact that he owns 9.3 acres at the proposed business site (ample parking for customers) and has a large enough drive to accommodate the needs of his customers. Mr. Duevalle has stated that this will be a family run business therefore; PK-03 does not have an effect on this operation.

It is the Plan Director's recommendation to approve the requested special exception for the purpose of operating an enclosed Auto Body Shop on his property, located in the AG District at 9701 South 400 East, Macy, IN, approximately 9.3 acres. Casi Cramer said the Board might want to place a condition on Mr. Duevalle's business regarding painting.

Mark Martens asked the petitioner if there was anything they would like to add. John Duevalle said he does not plan on expanding his business anymore than it already is. He noted that he and his wife cleaned up the property after they bought it and their intentions are to ensure that it stays

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

within its current status. John stated he does not plan on ever having any of the vehicles outside because he hates junk. He explained he does all of his painting with an HVLP gun, which means High Volume Low Pressure. He stated this gun puts more paint on the car than in the air and is the newest thing created for the environment.

Mark Martens asked if the Board had questions for the staff or petitioner. Joe Wegner asked how much or how often Mr. Duevalle would be painting. John Duevalle said he sprays maybe a gallon of paint per three weeks, he stated one person cannot exceed more than that. Joe Wegner asked if Mr. Duevalle would paint whole cars. John Duevalle stated he sometimes does do overall paint jobs, but not very often. Dan Walsh questioned whether or not this would be a full-time business. John said yes it would be a full-time business. John explained he was currently zoned in Cass County for the same business and he ran the business out of his house for almost five years and he never had any neighbors complain. He further explained what little waste there is, which is usually wash thinner that goes in a five-gallon can and is taken to a place like Test Rock to be disposed of properly. Mrs. Duevalle added that most people think the fumes will be terrible, but with the new modern tools that can be used, the paint quickly dissipates in the air and most of it can be swept up. She explained with the catalysts and hardeners that are used there is very little waste or mess that cannot be cleaned. Dan Walsh asked if there was a paint booth in the building. Mr. Duevalle stated he did not have a paint booth in his building, but he does have an exhaust fan and doors that close down but because of the hardeners that he uses, the paint usually dissipates back down to the floor before it even reaches the exhaust fan. He said he has no color on his exhaust fan unless he paints a harsh color like red and even then the color sticks on the blades and can be wiped off. Mark Martens questioned if Mr. Duevalle had plans of adding on to the structure. John Duevalle said he would be building a wall on the inside of the building to try to separate his painting projects from the rest of his projects, he would not be adding on to the outside of the building. Linda Herd asked if Mr. Duevalle did automotive work in his business. John Duevalle said he does not do mechanical work he just does body work. Linda Herd questioned whether or not Mr. Duevalle had insurance for a commercial business, since he did not have a paint booth. John Duevalle said he does not have insurance for a commercial business because his business is by appointment only so he does not have very much business. Joe Wegner asked if Mr. Duevalle had any State permits or requirements that he had to comply with. John Duevalle said no, he does not have any permits or requirements from the State, but he has been around auto body shops all of his life and worked in them. John explained that he does not buy anymore paint than the average person. Mrs. Duevalle said anyone could go buy the paint that John buys and uses for his business. John stated he buys DuPont products because they dry and dissipate quicker. He did say if you were in the building, and did not use a respiratory, the paint fumes could be harmful to you. Mark Martens asked for any further questions by the Board to the staff or petitioner.

Being none, Mark entertained a motion to open the Public Hearing. Dan Walsh moved to open the Public Hearing. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Linda Herd, Joe Wegner, and Mark Martens being in favor and no one opposing.

Mark Martens asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Dave Emery (4158 W 1350 S, Macy, IN) said he was unsure whether he was in favor of the petition or against it but he has some questions. Dave questioned with an enclosed auto body shop Mr. Duevalle can have two unlicensed or inoperable vehicles on his property. Casi Cramer explained he can have two unlicensed or inoperable vehicles on his property within plain site of the road unless they are a minimum of two-hundred (200) feet

FULTON COUNTY BOARD OF ZONING APPEALS

JULY 10, 2002

from the front property line and a minimum of fifty (50) feet from the side and rear property lines. Dave Emery said by those regulations Mr. Duevalle could end up with a junkyard on his property. Casi explained Mr. Duevalle could not have a junkyard on his property unless he rezones it and actually have it approved by the Board. Dave Emery questioned what the definition of a junkyard was. Casi Cramer read aloud the Fulton County Zoning Ordinance definition of a junkyard: A place, usually outdoors, where waste or discarded used property other than organic matter, including but not limited to automobiles, farm implements and trucks, is accumulated and is or may be salvaged for reuse or resale; this shall not include any industrial scrap metal yard. The storage, dealing in or the permitting of the accumulation of significant quantities of combustible, organic or nonmetal scrap materials such as, but not limited to, wood, paper, rags, garbage, tires, bones and shattered glass on the premises of such an establishment will disqualify it from being classified as a scrap metal yard, and the same will be classified as a junk yard. Casi went on to read PK-05 of the Zoning Ordinance that states: If more than two (2) vehicles without a current year license plate or in inoperable condition are stored on a property in residential and agricultural zone districts the following conditions apply. A. They must be parked: in completely enclosed buildings; or a minimum of two-hundred (200) feet from the property line, a minimum of fifty (50) feet from the side property line, or in the rear yard; and a minimum of two-hundred (200) feet from a lake or river. B. They must be screened from view. Screening includes fencing, landscaping, or placement so that it may not be seen from the road. Casi Cramer explained if Mr. Duevalle wanted to store cars on his property he would have to abide by all of these regulations. John Duevalle stated no one should be worried about that, because he will not allow that to happen on his property. John explained that he and his wife just finished cleaning up this property and they want it to stay that way. Dave Emery questioned if the Duevalle's sell their property within the next couple of years if the property could still be used as an Auto Body Shop or not. John Duevalle said he thought the special exception was just for the person who requested it. Mrs. Duevalle stated when they had their business in Cass County the special exception was specifically just for them and once they moved it could no longer be utilized as an Auto Body Shop unless someone when back to the Board to ask for special permission. Mark Martens noted that the Board could limit the special exception to the Duevalle's. Dave Emery stated if the Board is able to limit the special exception then he would like to see that done. Mark Martens asked for any further comments in favor of the petition. Mrs. Duevalle said that John does excellent work and provides great service for anyone seeking to have his or her car properly repaired. She stated that they always have satisfied customers that are willing to come back if they need to. Mark asked for anyone else in favor.

Being none, Mark Martens asked for those opposing the petition to please rise and state their name, address, and reason for attending the public hearing. Brian Mikesell (3191 E 950 S) said he has the only farm adjacent to the proposed facility. He noted that he is an Industrial Arts teacher and he teaches Auto Body classes at his school. He explained that they are required to have a two-stage filtration system in their Auto Lab before they can paint with any catalyst paint. Brian stated the building Mr. Duevalle is planning on using was built for agricultural use only and there is a direct duct system on the south side of the building, which ducts the exhaust from his paint fumes. Brian said there is paint on the draft ventilator. He explained that his mother lives directly northwest of the proposed site and prevailing wind comes from the southeast. His mother has congestive heart failure and has already had two open-heart surgeries and is probably working on her third. Brian said she built the property where she lives, long before the Auto Body Shop was there, in order to live out the duration of her life. He noted that there is currently a junkyard across the road from her where tires and shingles are burnt frequently. He explained that the junkyard is not regulated, he is unsure who to talk to about getting it regulated, but if that cannot be regulated, he does not

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

understand how the Auto Body Shop is going to be regulated. Brian stated he does know that there is a State standard for Auto Body Shops and filtration of air that is discharged by a Body Shop. If you are going to operate a Body Shop then you should have to abide by the same rules the schools do in regards to Body Shops. Brian said if the Board does allow an Auto Body Shop to be placed there, they should know minimum and maximum parts per thousand of catalyst that can be in the air. He said the better quality paints have hardeners in them and those hardeners have cancer-causing caseinogens in them. Brian noted that Mr. Duevalle stated that he wears a respiratory when he works with the paint. Brian feels if you are going to suck the air from the building and throw it out into the atmosphere, then everyone in the neighborhood should be wearing a respirator. Brian Mikesell ended by stating that he was opposed to the Auto Body Shop because it is an agricultural zone and that is the way it needs to stay. Drenda Beaver (4667 W 1050 N, Miami County) stated she lives approximately a quarter of a mile from the proposed facility. Drenda said she is concerned with Mr. Duevalle saying he does not need a license to operate his business. She thought it was required that you have some type of license, or something like that. Drenda questioned why Mr. Duevalle was going to put in a paint booth later if he was not planning on receiving more business than what he already has. She feels that Mr. Duevalle is trying to make an income from this business, therefore, he has to be planning on expanding, or why else would he need a paint booth. Drenda is also concerned with the surrounding neighbors and her family's health problems being affected by the fumes coming out into the air from this proposed business. Drenda said if the Board does pass this petition she would like to see some stipulations be placed on it, like putting in a filtration system, or being checked up on to make sure he is operating his business correctly. Drenda Beaver ended by stating that she was opposed to the proposed Auto Body Shop. Mark Martens asked for any further comments opposing the petition. Being none, he asked for rebuttal by the petitioner.

John Duevalle said he has always planned on building a paint booth in the barn, but he just has not gotten to it yet because he had to fix the ceiling and a few other things on it first. John stated the paint that he buys could be bought by anyone; you do not have to have anything special to purchase it. He explained that he never plans on hiring anyone to help him with his business, because he wants to keep it as a family run business. He also said he never plans on expanding his business anymore than what it already is. John stated he wanted to set up his business the right way, so he did not have people bringing up questions and getting him in trouble for doing his business out of his home. Mrs. Duevalle said that the barn could be utilized for more than just agricultural uses. Mrs. Duevalle stated that they had the exact set up at their old shop and nobody every complained about the smell or anything like that. John Duevalle said his waste products will be put in a can and taken to a site where they can be properly disposed of and he would have that paper work on hand for people to inspect if they needed to. John explained he never plans on having any junk cars sitting around on the property, and if so, they would be hauled off. Mark Martens asked for any additional comments from the public.

Brian Mikesell stated he does not have an issue with the parts of the cars; he is concerned with the airborne quality and the paint itself. Brian said he has been through classes, he teaches classes, and it is required that all the children in his classroom wear respirators. He noted that it is required to have a two-stage filtration system and if it is required of him as a teacher, then all of the independent body shops should be required to have one too. Brian stated if it is sending out carcenogens then he does not want it next to his mother and his farm. Brian feels a single exhaust fan coming out of the building is not the right system for an Auto Body Shop. He stated that you cannot take something that is toxic and blow it into the air without it passing through some type of filtration system first.



FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

setback is thirty (30) feet off of the right-of-way. Casi noted she would be surprised if Marshstown Road was even fifteen feet (15) wide. To be in compliance with the Fulton County Zoning Ordinance, Mrs. Ewing would have to build her garage and breezeway a total of forty-eight and five tenths (48.5) feet from the center of Marshstown Road. The closest point of the house sits a total of approximately 8.5 feet from the right-of-way of Marshstown Road. Casi said if the garage were to be placed flush with the house, Mrs. Ewing would have to cut down an adult tree located to the rear of where the proposed garage would be placed. The garage could not be built anywhere but the proposed location, due to a steep incline located in the rear of the property.

It is the Plan Director's recommendation to approve the requested development standards variance of 24.17 feet for the purpose of constructing a breezeway and garage.

Mark Martens asked if the petitioner had anything else to add. Nancy Ewing stated she had nothing further to add. Mark then asked for Board questions to the staff or petitioner. Joe Wegner said he looked at the site and he did not think that there was enough room for another car to park in front of Mrs. Ewing's garage. Mrs. Ewing stated that the new garage would be back one foot farther than the old garage was. There is no really good spot for anyone to park on Marshstown Road. Casi Cramer noted that Mrs. Ewing complies with all other setbacks. Mark Martens asked for any further Board questions or comments.

Being none, Mark entertained a motion to open the public hearing. Dan Walsh moved to open the public hearing. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Linda Herd, Joe Wegner, and Mark Martens being in favor and no one opposing.

Mark Martens asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing to do the same. Being none, he entertained a motion to close the public comments. Dan Walsh moved to close the public comments portion of the petition, Docket #BZA 42-0602 Nancy Ewing. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark Martens then asked for any further Board discussion. Joe Wegner said he felt this new garage would be an improvement. Being no further Board discussion, Mark Martens entertained a motion regarding the petition.

Debbie Barts moved to approve the development standards variance, on Docket #BZA 42-0602 Nancy Ewing, of 24.17 feet to erect a garage and breezeway on her property, 7282 South Marshstown Road, Kewanna, closer than the required front setback within the Residential Cluster District (R1). Dan Walsh seconded the motion.

Dan Walsh moved to close the Public Hearing. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Linda Herd, and Mark Martens being in favor and no one opposing.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled Y). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Joe Wegner                      Yea

FULTON COUNTY BOARD OF ZONING APPEALS  
JULY 10, 2002

Debbie Barts	Yea
Dan Walsh	Yea
Linda Herd	Yea
Mark Martens	Yea

The motion to approve the development standards variance, on Docket #BZA 42-0602 Nancy Ewing, of 24.17 feet to erect a garage and breezeway on her property, 7282 South Marshtown Road, Kewanna, closer than the required front setback within the Residential Cluster District (R1) passed with five votes in favor and no one opposing.

It is duly noted there was not a Plan Director Report given, there were no Public Comments, and there were no Board Comments given.

Being no further business to come in front of the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn the July 10, 2002 Board of Zoning Appeals meeting. Dan Walsh moved to adjourn the July 10, 2002 Board of Zoning Appeals meeting at 11:25 P.M. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Linda Herd, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, AUGUST 14, 2002

7:00 P.M.  
COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR:  
JULY 10, 2002

OLD BUSINESS  
*John Dnevalle (41-0602)*

NEW BUSINESS:  
*Daniel Minix (43-0702)*  
*David Bookwalter (44-0702)*  
*Pete Cabrera (45-0702)*

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 14<sup>th</sup> day of August 2002 at 7:00 P.M., in the Commissioners/Council Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:06 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Linda Herd; Joe Wegner; and Debbie Barts. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller.

IN RE: MINUTES

07/10/02

Mark Martens stated he would like the Board to review the minutes during their leisure time and wait to approve them. Mark said if anyone has corrections or changes to make, they should be presented now, if not, then he encouraged the Board to table them. He explained, if they table the minutes the Board has ample time to review them with a more critical eye and they can be approved at the next regularly scheduled meeting. Mark entertained a motion regarding the July 10, 2002 minutes. Dan Walsh moved to table the July 10, 2002 Board of Zoning Appeals minutes until the September 11, 2002 meeting. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Linda Herd, Joe Wegner, and Mark Martens being in favor and no one opposing.

IN RE: OLD BUSINESS

JOHN DUEVALLE  
SPECIAL EXCEPTION

John Duevalle, Docket #BZA 41-0602, Special Exception. Mr. Duevalle is requesting a special exception for the purpose of operating an enclosed Auto Body Shop. The proposed shop would be on his property, located in an Agricultural District (AG) at 9701 South 400 East, Macy, IN. The property consists of approximately 9.3 acres. During the July 10, 2002 BZA meeting Mr. Duevalle's request was tabled for further research.

Plan Director, Casi Cramer said she had contacted a couple of large body shops (one in Muncie and one in Indianapolis) regarding types of state permits that may be needed. Neither body shop had any knowledge of a state permit/license required by the State. Casi did find that there is a state approval that Mr. Duevalle has to have to run an Auto Body Shop, which ensures that the fire codes and paint booth requirements are met. Casi said the Department of Fire and Building Services issues this approval. Casi stated that she had been on a tour of Mr. Duevalle's Auto Body Shop and presented a picture of the building in which the proposed shop will be located (see attachment A). This picture also shows the exhaust fan, which is located at the south end of the building and there appeared to be no paint on the building, or the fan, at the time that Casi visited the site. Casi noted that the Building Inspector, Gary Madlem, also went out to the site a week before Casi did and took this picture. Casi then presented a picture of the inside view of the exhaust fan with the filter covering in place (see attachment B). She explained the filter is placed in a wood frame in which the filter slides out and in when replacements are needed. Casi drew a floor plan of the proposed Auto Body Shop, which indicates where everything is located inside the building (see attachment C). Casi explained there is a sliding door that separates the paint room from the rest of the building. There are filter air intakes placed on each side of the sliding door. Casi stopped by Wilson's Auto Body

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

Shop in Rochester and spoke to the owner, Loren Wilson. Casi took a tour of Wilson's to see how they operated their painting facility. Mr. Wilson's operation utilizes the same High Volume Low Pressure (HVLP) paint guns and DuPont Paint products that Mr. Duevalle is proposing to use in his facility. Casi said Mr. Wilson explained to her that the HVLP guns create very little waste. The paint products dissipate fast, so that any paint not sticking to the car dries and falls onto the floor, which then can be swept up. Mr. Wilson had no knowledge of any state license or permit that needed to be obtained to operate an Auto Body Shop. Mr. Wilson also utilizes the same type of filtration system that Mr. Duevalle has proposed to use within his facility. Casi explained the only difference in Mr. Wilson's filtration system was the fact he had a metal frame around his filters instead of a wood frame like Mr. Duevalle's. Mr. Wilson did not have a paint booth for his operation, but he did have a similar setup to what Mr. Duevalle had in his building. Casi Cramer said it is her recommendation to approve the request for a special exception regarding an enclosed Auto Body Shop with the conditions that Mr. Duevalle obtain State approval and that the special exception is granted only for Mr. Duevalle.

Mark Martens asked Mr. Duevalle if he had anything further to add to the Plan Director's report. John Duevalle said he felt that Casi Cramer had covered everything. Mark then asked the Board if they had any questions for the staff or the petitioner.

Joe Wegner questioned where Wilson's Auto Body Shop was located. Casi Cramer stated it is located on Ft Wayne Road near the Rochester Airport and the manufactured home factories. Joe asked if it was located in city limits. Casi said it is located in Rochester city limits. Dan Walsh asked if the filters were special made for paint booths. Casi was unsure of what type of filter Mr. Duevalle would be using in his operation. John Duevalle stated he would be using a box filter to catch the paint over spray. Casi noted she had asked Mr. Wilson if he had to special order the filters and he said no, they are just cotton-matted filters. Casi presented some pictures of filters that would be used in these operations (see attachment D). Mark Martens asked for any further comments or questions by the Board to the staff or petitioner. Being none, he entertained a motion to open the public hearing.

Joe Wegner moved to open the public hearing. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh, Debbie Barts, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark Martens then opened the floor for those people in favor of the petition. He asked all those speaking in favor to please rise and state their name, address, and reason for attending the public hearing. Barry Clemons (9701 S 400 E, Macy) said he lives about 500 feet south of the proposed facility. He further stated that he owns all of the land surrounding Mr. Duevalle's property and the Duevalles' are great neighbors. Barry said there have never been any cars or anything pertaining with Mr. Duevalle's business sitting outside on the property. Barry claimed that he is the closest house to Mr. Duevalle and he has never smelled paint coming from the building or body shop. He has absolutely no problem with Mr. Duevalle operating an Auto Body Shop at the proposed site. Mark asked for anyone else in favor to speak. Bob Mendenhall (576 W 275 N, Logansport) stated that the Duevalles' used to live only 300 feet from his residence in Logansport. He said that Mr. Duevalle did quite a bit of body work at the Logansport residence and he had never smelled any paint fumes coming from the body shop. Bob further stated that they never heard any pounding, vibrations, or machinery. Bob said he would love to have Mr. Duevalle back in his neighborhood if

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

it was possible. Mark Martens asked for any further comments by those people in favor of the petition. Being none, he moved on to those opposing the petition.

Mark Martens asked those people in opposition of the petition to please rise and state their name, address and reason for attending the meeting. Drenda Beaver (4667 W 1050 N, Miami County) said she was not necessarily against the operation, but she had some questions. Drenda stated that since the last meeting, some work had been done to the inside of the proposed facility and she was unsure whether it was work that was required of Mr. Duevalle or if he did it on his own. She also said that the neighbors were not at the meeting to pick on Mr. Duevalle, or to say whether he was a bad neighbor, or a good neighbor. The neighbors main concern was whether there were certain codes and regulations he had to meet before operating his business. Drenda said her main concern is even though she cannot smell the paint, is it still in the air. Mark Martens asked for any further comments from those people in opposition of the petition. David Emery (4158 W 1350 N, Macy, IN) questioned if all the regulations were in place in the Ordinance, so this proposed Auto Body Shop does not turn into a junkyard. Mark Martens felt Casi Cramer had stated that pretty clearly at the last meeting and the position has not changed at all. David asked if that was the regulation that Mr. Duevalle can only have two cars parked outside at all times. Mark explained he can have two cars parked outside and any others must be 200 feet off all property lines with a site barrier surrounding them. Bob Mendenhall commented that the seven years the Duevalles' lived next to them, they never had a junkyard. Bob said Mr. Duevalle took the cars into his shop, out of site, fixed them or painted them and then returned them to wherever they were destined to go. Mark Martens asked for final comments by those opposing the petition. Being none, he asked Mr. Duevalle if he had anything further to add.

John Duevalle said he is not going to have a junkyard on his property. John likes to work at home and he will do whatever it takes to get along with all of his neighbors. Mark Martens asked for any further comments. Being none, he entertained a motion to close public comments.

Dan Walsh moved to close the public comments portion of the petition, Docket #BZA 41-0602 John Duevalle. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Linda Herd, Joe Wegner, and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion regarding this petition. Mark added that the Board is either going to be approving a special exception, or not, and any State regulations should be carried out by the State, and not this Board. Mark feels that is the State's responsibility, not the BZA's. Being no further Board discussion, Mark entertained a motion regarding the petition.

Dan Walsh moved to approve the request for a special exception, Docket #BZA 41-0602 John Duevalle, to operate an enclosed Auto Body Shop on the property known as, 9701 S 400 E, Macy, in the Agricultural District (AG) with conditions that Mr. Duevalle receive State approval and that the special exception is only for Mr. Duevalle. Debbie Barts seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled E). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Linda Herd	Yea
Joe Wegner	Yea
Debbie Barts	Yea



FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

Joe Wegner moved to open the public hearing. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh, Linda Herd, Debbie Barts, and Mark Martens being in favor and no one opposing.

Mark Martens then opened the floor for those people in favor of the petition. He asked all those speaking in favor to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked those people in opposition of the petition to please rise and state their name, address and reason for attending the meeting. Being none, he asked Mr. Minix if he had anything further to add.

Daniel Minix stated one of his neighbors was concerned with the fact that he thought the garage would be turned into a workshop. Daniel has no intentions of turning the garage into a shop, it will be utilized strictly as a garage to park his vehicles. Mark Martens asked for any further comments. Being none, he entertained a motion to close public comments.

Dan Walsh moved to close the public comments portion of the petition, Docket #BZA 43-0702 Daniel Minix. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion regarding this petition. Being no further Board discussion, Mark entertained a motion regarding the petition.

Dan Walsh moved to approve the request for a development standards variance, on Docket #BZA 43-0702 Daniel Minix, of 9 feet from the north side property line to erect a garage on the property known as, 7464 N 550 E, Rochester, closer than the required side setback within the Agricultural District (AG). Linda Herd seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled I). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Dan Walsh	Yea
Debbie Barts	Yea
Joe Wegner	Yea
Linda Herd	Yea
Mark Martens	Yea

The motion to approve the request for a development standards variance, on Docket #BZA 43-0702 Daniel Minix, of 9 feet from the north side property line to erect a garage on the property known as, 7464 N 550 E, Rochester, closer than the required side setback within the Agricultural District (AG) passed with five votes being in favor and no one opposing.

IN RE: NEW BUSINESS

DAVID BOOKWALTER  
DEVELOPMENT STANDARDS VARIANCE

David Bookwalter, Docket #BZA 44-0702, Development Standards Variance. Mr. Bookwalter is requesting a development standards variance of 25.5 feet off of the front yard setback for the

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

purpose of constructing an addition (40'x28' with a 10'x6' attachment to the existing garage) to the north side of his existing detached garage (24'x20'). The existing garage is located along the east property line. The property is located within the Agricultural District (AG) at 3978 S 200 W, Rochester, IN. The property consists of approximately 2.14 acres.

Casi Cramer explained for Mr. Bookwalter to be in compliance with the Zoning Ordinance he would have to build the addition a total of 56.5 feet from the center of 200 W. Casi presented an aerial of Mr. Bookwalter's property, which shows that he is located on the corner of 200 W and 400 S (see attachment J). Casi also presented a rough draft site plan of Mr. Bookwalter's property showing where everything is located (see attachment K). Casi explained the existing driveway comes off of 200 W and curves behind the existing garage. Casi said the total right-of-way on 200 W is 32 feet. The existing garage only sits 31 feet from the center of 200 W and Mr. Bookwalter would like to keep the addition flush with that structure. Mr. Bookwalter would be utilizing the new addition as storage for his various types of machinery and vehicles. Casi presented actual pictures of where the proposed addition would be placed on the property (see attachments labeled L). Casi Cramer recommended that the Board approve the requested variance of 25.5 feet for the purpose of constructing an addition on to the existing detached garage.

Mark Martens asked Mr. Bookwalter if he had anything further to add to the Plan Director's report. David Bookwalter stated he would like to build the addition in order to store some of his vehicles and machinery inside of a building rather than leaving them outside. He said this would make his property look a little more presentable. David explained the existing garage is a concrete block garage with a metal roof and it sweats badly. He noted that he placed his tools in the old garage a year ago and when he took them out this spring they were all rusted. He cannot build any further back since there is a plugged ditch tile in that location. He said there is a water problem farther to the west and if he puts his addition back that far, he will have to do a lot of backfilling.

Mark then asked the Board if they had any questions for the staff or the petitioner. Dan Walsh questioned how much lower the land was to the west. David Bookwalter replied that he had added two and a half feet to the back of the existing garage already, so he would guess it would be between two and a half feet and three feet. He went on to say that there is a big moisture problem back to the west, due to the ditch. David explained if he moves it back, he would also have to extend his driveway because of an existing foundation. He currently has doors placed on the east and west side of the existing garage. Mark Martens stated Mr. Bookwalter is not creating any worse of a situation, than what he already has on that property. David Bookwalter added that a tree would have to be removed in order to move the addition back farther. Dan Walsh said his thought was to move the addition back farther, so that it meets the requirements. Dan also thought Mr. Bookwalter would be removing the old garage at some point in time, because of the current problems he has with it. David Bookwalter has no intentions of removing the old garage. Mark Martens asked for further Board comments or questions to the staff or petitioner. Linda Herd asked if Mr. Bookwalter would be having two entrances on his new addition, like he currently has on his existing garage. David Bookwalter has intentions of putting an 8 foot door on the east side of the addition and a 10 foot door on the west side. Mark asked for any further Board comments or questions. Being none, he entertained a motion to open the public hearing.

Dan Walsh moved to open the public hearing. Linda Herd seconded the motion. Motion carried as follows: Dan Walsh, Linda Herd, Debbie Barts, Joe Wegner, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

Mark Martens then opened the floor for those people in favor of the petition. He asked all those speaking in favor to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked those people in opposition of the petition to please rise and state their name, address and reason for attending the meeting. Being none, he asked Mr. Bookwalter if he had anything further to add.

David Bookwalter stated he would appreciate it very much. Mark Martens asked for any further comments. Being none, he entertained a motion to close public comments.

Joe Wegner moved to close the public comments portion of the petition, Docket #BZA 44-0702 David Bookwalter. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh, Debbie Barts, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion regarding this petition. Dan Walsh has a problem with granting a variance for a development standards variance, when there is two acres of land to work with and the setback can be met. Mark Martens said, from his point of view, the Board is not altering the setback since he is building it onto an existing structure. Mark stated if it was a brand new building, then he would also have a problem with granting the variance. Debbie Barts agreed with Mark Martens and she said, considering where the existing driveway is located, she could see why Mr. Bookwalter would not want to move the addition back any farther. Mark then asked for any further Board discussion regarding this petition. Being no further Board discussion, Mark entertained a motion regarding the petition.

Joe Wegner moved to approve the request for a development standards variance, on Docket #BZA 44-0702 David Bookwalter, of 25.5 feet to erect an addition to his existing garage located at, 3978 S 200 W, Rochester, closer than the required front yard setback within the Agricultural District (AG). Debbie Barts seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled M). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Linda Herd	Yea
Joe Wegner	Yea
Debbie Barts	Yea
Dan Walsh	Nay
Mark Martens	Yea

The motion to approve the request for a development standards variance, on Docket #BZA 44-0702 David Bookwalter, of 25.5 feet to erect an addition to his existing garage located at, 3978 S 200 W, Rochester, closer than the required front yard setback within the Agricultural District (AG) was approved with four votes being in favor and one vote opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

IN RE: NEW BUSINESS

PETE CABRERA  
DEVELOPMENT STANDARDS VARIANCE

Pete Cabrera, Docket #BZA 45-0702, Development Standards Variance. Mr. Cabrera is requesting a development standards variance of 32 feet from the front yard setback for the purpose of building a house. The property is located within an Agricultural District (AG) at 13202 E State Road 114, Akron, IN. The property consists of approximately .5 acres.

Casi Cramer stated to be in compliance with the Zoning Ordinance the house must be built a total of one hundred feet from the centerline of State Road 114. The new home is proposed to sit a total of 68 feet from the center of State Road 114. Casi presented a plat picture of the Cabrera's lot showing county road 1325 E and State Road 114 (see attachment N). The lot is 146 feet wide in the front and 72 feet wide in the rear. The existing home will be torn down and a new modular will be set in its place. The existing home currently sits a total of 52 feet from the center of State Road 114. Casi presented a rough sketch of the site, which shows where everything would be located on the lot (see attachment O). Casi explained the new home would sit back farther from State Road 114 than the current existing home does. The existing garage would stay where it is and the new home will be attached to the garage. The new home will sit 51 feet and 33 feet from the east side property line. The septic system is located to the rear of the property where the lot narrows. Casi presented an actual picture of the backside of the existing home that will be torn down and shows where the new home will be placed (see attachment P). Casi noted that the new home would meet all of the other required setbacks except for the front yard setback. Casi Cramer recommended that the Board approve the requested variance of 32 feet for the purpose of building a new home.

Mark Martens asked Mr. Cabrera if he had anything further to add to the Plan Director's report. Pete Cabrera said the home they currently live in is old and falling apart and they would like to replace it with a newer home. Pete also stated that he has five people in his family and their home now is too small for all of them. Mrs. Cabrera added if they move the home back any farther, they would be in the fingers of their septic system. Pete Cabrera explained that it would cost as much, if not more, to fix the old home, as it would to buy a new, bigger, home.

Mark then asked the Board if they had any questions for the staff or the petitioner. Mark Martens questioned what determines the front of a house. Casi Cramer said it is where the driveway meets the road. Mark asked if that was the Board's definition. Casi explained administratively she uses the definition of where the driveway meets the road as the front yard. Mark asked because the new house will be facing 1325 E instead of State Road 114 like the old home. Casi said if the Board considers that the front yard, then that means the home only has to be 15 feet off of State Road 114. Casi asked the Cabrer's if their driveway would still be coming off of State Road 114. The Cabrer's stated the driveway would still be off of State Road 114. Mark Martens said if that is how Casi handles these situations administratively, then that was fine with him. Mark asked for further questions by the Board. Joe Wegner commented that what the Cabrer's want to do is an improvement to what they have currently. Mark asked for any further Board comments or questions. Being none, he entertained a motion to open the public hearing.

Debbie Barts moved to open the public hearing. Joe Wegner seconded the motion. Motion carried as follows: Debbie Barts, Joe Wegner, Linda Herd, Dan Walsh, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

Mark Martens then opened the floor for those people in favor of the petition. He asked all those speaking in favor to please rise and state their name, address, and reason for attending the public hearing. Brenda Ross (13271 E State Road 114, Akron) feels that this is a great improvement compared to what the Cabrereras' have currently. Arlene Lytle (13252 E State Road 114, Akron) stated she had lived in the area for over 50 years and understands what trouble the Cabrereras' have had to go through with their current home. Arlene said the existing house was built before her and her husband moved into their home. She knows the man who built the home and it was built with any leftovers that he had from his other jobs. Arlene said the Cabrereras' are great neighbors and they want to keep them. Russ Reahard (2500 Patterson Road, Warsaw) the contractor stated he was in favor of the petition. Russ explained they wanted to try and preserve the garage, since it is only three to four years old. Mark Martens asked for any further comments in favor of the petition.

Being none, Mark asked those people in opposition of the petition to please rise and state their name, address and reason for attending the meeting. Being none, he asked Mr. Cabrera if he had anything further to add.

Mr. Cabrera explained he and his family are living in a trailer court and he wants his home back. Mark Martens asked for any further comments. Being none, he entertained a motion to close public comments.

Linda Herd moved to close the public comment portion of the petition, Docket #BZA 45-0702 Pete Cabrera. Dan Walsh seconded the motion. Motion carried as follows: Linda Herd, Dan Walsh, Joe Wegner, Debbie Barts, and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion regarding this petition. Being none, he entertained a motion regarding the petition.

Linda Herd moved to approve the request for a development standards variance, on Docket #BZA 45-0702 Pete Cabrera, of 32 feet to erect a home on the property known as, 13202 E State Road 114, Akron, IN closer than the required front yard setback within the Agricultural District (AG). Debbie Barts seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled Q). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Dan Walsh	Yea
Debbie Barts	Yea
Joe Wegner	Yea
Linda Herd	Yea
Mark Martens	Yea

The motion to approve the request for a development standards variance, on Docket #BZA 45-0702 Pete Cabrera, of 32 feet to erect a home on the property known as, 13202 E State Road 114, Akron, IN closer than the required front yard setback within the Agricultural District (AG) passed with five votes in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

IN RE: PLAN DIRECTOR REPORT

Casi Cramer presented the Board with an update of permits, applications, violations, and complaints that have occurred in the Plan Commission Office (see attachment R).

Casi discussed the water testing that would be conducted by the Health Department due to the Bryan Tam petition with the Board.

Casi stated she had some corrections that needed to be made to the Rules of Procedure. The Board discussed the following changes, which are listed in **bold** and underlined:

Article III Meetings

Section 1. The regular meetings of the Board shall be the 2<sup>nd</sup> Wednesday of each month at **7:00** pm.

The Board consensus agreed on this change.

Article X Appeal Procedure

Section 1. **Every petitioner for an appeal of a development standard variance, use variance, or special exception an administrative determination shall complete an application form supplied by the Board. The Board may require the petitioner to submit any additional information it deems relevant for consideration.**

Section 2. **(1) Every petition for an appeal of a determination by the Board shall be filed with the Administrative Secretary no later than 30 days after the determination.**

Greg Heller stated he did not feel that the Board needed to change Article X. Greg explained any decision that the Board makes could be appealed to the Circuit Court. Greg said the petitioner has a prescribed time frame in which to appeal the Board's decision to the court and if they miss that time frame they are done. Greg stated he does not understand why they would want to have the Board review a decision that they have already made, but for some reason State statute provides for that. Greg said he does not feel the Board needs to make this change. The Board consensus was to leave Article X as it currently is, without any changes.

Mark Martens entertained a motion regarding the amendments to the Rules of Procedure. Debbie Barts moved to approve the amendments to the Rules of Procedure. Dan Walsh seconded the motion. Motion carried as follows: Debbie Barts, Dan Walsh, Linda Herd, Joe Wegner, and Mark Martens being in favor and no one opposing.

Casi Cramer said she would like Greg Heller to talk to the Board about the Writ of Certiorari that all Board members should have received in the mail. Greg said the Board's decision regarding the Bryan Tam confined feeding operation has been appealed to a higher court. He explained any one can appeal the Board's decision to a higher court, or the Circuit Court of Jurisdiction. Greg stated in

FULTON COUNTY BOARD OF ZONING APPEALS  
AUGUST 14, 2002

order to get the process started the person wanting to appeal the Board's decision has to file a Writ of Certiorari to the Circuit Court. A Writ of Certiorari is an order from the court to the Board, which says, give me your entire record of proceedings that you used to base your decision on. This could include transcripts of the meeting, written findings of fact forms, reports, etc. Greg continued by saying, this is done to see that the Board did everything procedurally correct, and that there was enough evidence on record to justify the decision that was made. There was Board discussion regarding the procedure and timeline associated with the Writ of Certiorari.

It is duly noted there were no Public Comments or Board Comments given.

Being no further business to come in front of the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn the August 14, 2002 Board of Zoning Appeals meeting. Debbie Barts moved to adjourn the August 14, 2002 Board of Zoning Appeals meeting at 8:50 P.M. Joe Wegner seconded the motion. Motion carried as follows: Debbie Barts, Joe Wegner, Linda Herd, Dan Walsh, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, SEPTEMBER 11, 2002

7:00 P.M.

COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR:

JULY 10, 2002

&

AUGUST 14, 2002

OLD BUSINESS

NEW BUSINESS:

*William Risner (46-0702)*

*Daniel Shriver (47-0802)*

*Tom Atkinson (48-0802)*

*Benjamin Ramer (49-0802)*

PLAN DIRECTOR REPORT:

*Adoption of Collective Findings of Fact  
& Conclusions of Law*

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 11<sup>th</sup> day of September 2002 at 7:00 P.M., in the Commissioners/Council Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:08 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; and Joe Wegner. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller. It is duly noted that Debbie Barts and Linda Herd were absent.

IN RE: MINUTES

08/14/02

Chairman, Mark Martens, called for any additions or corrections to be made to the August 14, 2002 Board of Zoning Appeals minutes. Being none, Dan Walsh moved to approve the August 14, 2002 Board of Zoning Appeals minutes. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner and Mark Martens being in favor and no one opposing.

IN RE: MINUTES

07/10/02

Mark Martens recommended that the Board of Zoning Appeals minutes from July 10, 2002 be tabled until the next regularly scheduled meeting in October or until a special meeting can be called. Joe Wegner moved to table the July 10, 2002 Board of Zoning Appeals minutes until the next regularly scheduled meeting or until a special meeting can be called. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh and Mark Martens being in favor and no one opposing.

It is duly noted there was no Old Business reported.

IN RE: NEW BUSINESS

WILLIAM RISNER  
SPECIAL EXCEPTION

William Risner, Docket #BZA 46-0802, Special Exception. Mr. Risner is requesting a special exception for an accessory apartment to be located on his property. The property consists of one acre and is located in the Residential Cluster District (R1) at 677 Brentwood Drive, Akron, IN 46910. Mr. Risner's home and pole building are located on this property. He intends to build an accessory apartment within the existing pole building for his daughter's use. Mr. Risner has already obtained a soils report showing that the land can support a second septic system for use by the accessory apartment. He will have to obtain his septic permit prior to installing any new septic system. Attachment A shows where the proposed land and pole barn are located on Brentwood Drive. Attachment B is a close up of the existing pole barn, which would be utilized as the accessory apartment. Casi Cramer, Plan Director, explained that Mr. Risner would not be adding any more square footage on to the barn. All of the construction for the accessory apartment will take place on the inside of the existing pole barn. It was the Plan Director's recommendation that the Board grant the request for a special exception.

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

Mark Martens asked if Mr. Risner had anything further to add to the Plan Director's report. Mrs. Risner stood and stated that her husband could not be present at the meeting because of work. Mrs. Risner said her and her husband wanted to create the accessory apartment for the purpose of making a reasonable place for their daughter to live. She explained that her daughter would be making rent payments to her and her husband.

Mark Martens asked the Board members if they had any questions for Mrs. Risner or the Plan Director. Being none, he entertained a motion to open the public hearing portion of the petition. Dan Walsh moved to open the public hearing. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner and Mark Martens being in favor and no one opposing.

Mark asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Tony Carey stood and stated that he lives in Brentwood Estates. Tony said when he bought his place ten years ago he was handed a paper that gave him conditions to run by. He questioned if the Board was aware of the conditions placed in Brentwood Estates. Mark Martens replied that he had not been made aware of those. Casi Cramer asked if Mr. Carey was speaking of the covenants in place for Brentwood Estates. She explained any type of commitment or covenant placed in a subdivision is an agreement between the neighbors and the developer. Casi continued by saying the only way she can enforce covenants or commitments is if that specific covenant or commitment is also listed as a regulation in the Zoning Ordinance. If it is not listed as a regulation in the Zoning Ordinance then it is up to the developer and neighbors to make a decision based on a civil enforcement. Greg Heller, BZA Attorney, said the Board has certain criteria that they have to follow to grant the special exception. Greg explained covenants allow the neighbors to have enforcement power, but they have to do it on their own in court. He further noted the only thing the Board is concerned with is whether or not the petition meets all of the criteria that they must follow. The Board is not here to enforce restrictive covenants within a subdivision. Greg stated if someone has violated those covenants set forth by the developer, it is up to the developer and the neighbors to take the private action to court. Tony Carey said he was curious about whether the Risners' were going to have a couple of apartments on their property. Tony stated according to the covenants that cannot be done. Greg Heller said you might be right. Tony said he was not sure whether the Risners' were aware of the covenants or not. Mrs. Risner said there will not be a couple of apartments just one. Mark Martens noted that Mrs. Risner would have her time to reply to any comments opposing the petition later. Mark Martens explained the Zoning Ordinance binds the Board. Greg added that the Board was also bound by State statute for what they have to look at to approve the petition. Mark Martens asked Tony Carey if he was still in opposition of the petition. Tony Carey replied that without knowing all of the facts he could not say whether he was for it or against it. Mark asked for any further comments in opposition of the petition. Janet Gearhart stated her and her husband are the developers of Brentwood Estates. Janet said they went to the County Commissioners on April 3, 1995 and filed their restrictions for the subdivision. She explained every purchaser of property in the subdivision is handed the restrictions when they buy the land. She noted the restrictions say "nothing herein contained shall prevent any person or persons from purchasing more than one lot for the purpose of erecting thereon a single residential unit provided however no fractional part of any lot may be used for one complete residential unit it being understood and agreed that each designated lot area shall be the minimum amount of land area to be used for one complete residential unit". Janet said at this time they have thirteen properties built on in this subdivision, six lots sold to be built on, and seven lots to be sold and built on. She stated she and her husband put on these restrictions to protect their purchasers. She asked if the Board would

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

like a copy of the covenants placed on the subdivision Brentwood Estates. Mark Martens said he did not know that the covenants would impact the Board because they are going by the Zoning Ordinance. Mark differed to Greg Heller on this situation. Greg Heller, BZA Attorney, explained the Board's responsibility is to look at the State statute, which says in order to grant a special exception there is certain criteria that has to be met along with the Zoning Ordinance. Greg stated the Board's responsibility is to make sure that they are following State statute on the Zoning Ordinance, not to enforce restrictive covenants. He said if the Board grants the special exception the developer(s) and neighbors' remedy is to go into court and have an injunction issued in order to prevent it. Janet Gearhart asked if Greg was saying every time they give the covenants out to their purchasers they are worth nothing, unless they follow it with a court order. Greg Heller replied absolutely, however it is not a worthless piece of paper if someone enforces it. Greg stated again that it is not the Board of Zoning Appeals responsibility to enforce the covenants, it is the responsibility of the developer(s) and neighbors'. Roger Gearhart stood and said he was unsure of how the Zoning Ordinance was written but he knows there are certain sized lot requirements that are required for septic systems. Roger stated there is a certain size that a lot has to be for two residences. He asked the Board what the requirements were and how large a lot had to be in order to build a new home on it. Casi Cramer replied the minimum lot size is one acre but that is not necessarily the minimum amount you need to place a septic system. Casi noted the minimum lot size requirement of one acre is for the Agricultural District (AG) and Brentwood Estates is located in a Residential Cluster District (R1). Casi explained accessory apartments are listed as special exceptions in the R1 District. Roger Gearhart questioned which residential districts allowed these types of situations. Mark Martens noted some of the things listed as special exceptions under residential in the R1 District are: accessory apartment, multifamily dwelling, bed and breakfast facility, and residential facility for developmentally disabled. Roger Gearhart said that is for one structure and they are talking about two different structures. Mark Martens stated that he does not know that accessory means one facility or two and he does not necessarily agree that it has to be one structure. Casi Cramer explained the Zoning Ordinance refers to dwellings as primary structures and any other building on the lot, such as a pole barn or detached garage, as an accessory structure. The accessory apartment does not say that it has to be all one building, it could be an accessory building/structure, which has an apartment in it. Casi said in response to Mr. Gearhart's question about what residential districts the R2 District is a Multifamily Residential District and it allows things like multifamily dwellings, multifamily apartments, two-family dwellings, etc. She noted the R1 District allows two-family dwellings, single-family dwellings and as special exceptions accessory apartments and multifamily dwellings. The Rural Residential District (RR) also allows two-family dwellings and as a special exception a bed and breakfast facility. Casi explained the residential districts allow more leeway on multifamily dwellings. Roger Gearhart questioned if the Zoning Ordinance had a restriction within it that says existing subdivisions and restrictions should supersede what the new Zoning Ordinance says, such as a grandfather clause. Mark Martens stated once again that the covenants have to be enforced by the developer(s) and the neighbors' because it is not the BZA's responsibility to enforce them. Greg Heller explained even if the Board approves the special exception it does not mean that the special exception supersedes the restrictive covenants because those are enforceable through the court as a contract. Greg stated that the court is the avenue that they have to take to enforce those covenants. Lorene Billman, 550 Brentwood Drive, said she knows from experience that children do not stick around home for very long and she would like to know what the plans are for that accessory apartment after the child leaves. Mrs. Risner said her husband would use it for his own use. Lorene Billman questioned what the use was supposed to be. Mrs. Risner said he teaches thai-kwon-do and he would use the facility to practice in. Mark Martens asked for any others opposing the petition. Shanna Webb, 520 Brentwood Drive, stated she has

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

lived in Brentwood for two years and her concern is whether or not this will increase traffic because she has two small children. Shanna further stated that she was under the impression that they were not allowed to have a business in Brentwood Estates so how can Mr. Risner utilize it for his thai-kwon-do facilities after his daughter is done using it as an accessory apartment. Mrs. Risner said her husband would not have a business in the facility he would only use it to practice in. Shanna Webb questioned if Mr. Risner would have students come to the facility. Mrs. Risner responded by saying he may have a couple of students come to the facility. Shanna said he is holding a class then. Mark Martens held up the comments and stated that this sounded like an issue that did not meet the parameters of the Zoning Ordinance, which mandate what the Board's decisions must be based upon. Mark said he could tell by the conversations that are taking place that there are very high emotions and high expectations for those people that have moved into that area and he would recommend, whether the petition is approved or not, that the sellers of that property make sure that their restrictions go through and are followed as they intended them to originally. Roger Gearhart questioned who makes the final approval on the Zoning Ordinance and it's requirements. Greg Heller stated the Zoning Ordinance goes through several stages but the final approval comes from the County Commissioners. Roger said the County Commissioners approved this concept of that area prior to zoning. Roger stated for this reason he challenges what Greg Heller is saying. Roger Gearhart feels that this situation should be researched more before the Board makes a decision on the petition of Mr. Risner. Greg Heller explained that he is not saying that either one supersedes the other, what he is saying is that the Board is bound to follow certain criteria by statute and by ordinance. Greg said the remedy if they want to enforce those restrictive covenants, is not through the Board of Zoning Appeals, it is through court. Mark Martens asked for any one else opposing to speak. Larry Coplen stood and stated he was speaking in behalf of his mother Vada Coplen who lives at 667 Brentwood Drive. Larry questioned if the special exception was approved if that exception would forever run with the ground. Mark Martens answered it could be both yes and no, because the special exceptions that the Board has passed so far have been tied to the current property owner, so that when the property changes hands it does not necessarily mean that that exception rolls over to the other party. Larry Coplen questioned if the Board could then say that the special exception was only for the Risners' daughter so that when she decides to leave it can no longer be an accessory apartment. Mark Martens stated that the Board could place conditions on the use of the special exception. Larry Coplen suggested that the Board place a condition on the special exception that the Risners' have to notify someone when their daughter moves out so that it is known that the special exception no longer exists. Mark Martens asked for any further comments opposing the petition. Being none, he asked for any additional comments from the petitioner.

Mrs. Risner said they are not changing the building or anything else on their property. She explained that she needs a reasonable place for her pregnant daughter to live and she wants her daughter to be responsible enough to pay rent.

Mark Martens entertained a motion to close the public comments. Joe Wegner moved to close the public comments. Dan Walsh seconded the motion. Motion approved as follows: Joe Wegner, Dan Walsh and Mark Martens being in favor and no one opposing.

Mark asked for any Board discussion. Joe Wegner questioned if the accessory apartment would fit all of the other zoning requirements such as setbacks, etc. Casi Cramer noted that the building in which the accessory apartment would be located was existing before zoning therefore it is a grandfathered structure. Casi explained that the Risners' are not adding any square footage onto the building, they are just remodeling the inside of it and the Zoning Ordinance does not have any

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

jurisdiction over the remodeling of the inside of structures. Joe questioned if the septic system was approved or not. Casi said she received a copy of a letter from Wes Burden but the Health Department enforces all of the septic rules and regulations. Joe Wegner asked Mrs. Risner if it would present a problem to her if the Board placed a condition on the special exception that said the accessory apartment was only allowed for her daughter. Mrs. Risner said she did not have a problem with it as long as her daughter, her daughter's baby, and the baby's father were allowed to live there. Mrs. Risner added that they are putting in a septic system, which will be adequate for two bedrooms. Dan Walsh stated he had nothing further to add or discuss.

Being no further Board discussion, Mark Martens entertained a motion to approve, deny, or table the petition. Dan Walsh moved to approve the request for a special exception, on Docket #BZA 46-0702 William Risner, to use an existing structure as an accessory apartment located on the property known as, 677 Brentwood Drive, Akron, in the Residential Cluster District (R1) with the condition that the accessory apartment be only for Mr. and Mrs. Risner's daughter and family to reside in. Joe Wegner seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled C). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Joe Wegner	Yea
Dan Walsh	Yea
Mark Martens	Yea

The motion to approve the request for a special exception, on Docket #BZA 46-0702 William Risner, to use an existing structure as an accessory apartment located on the property known as, 677 Brentwood Drive, Akron, in the Residential Cluster District (R1) with the condition that the accessory apartment be only for Mr. and Mrs. Risner's daughter and family to reside in passed with three votes in favor and no one opposing.

IN RE: NEW BUSINESS

DANIEL SHRIVER  
SPECIAL EXCEPTION

Daniel Shriver, Docket #BZA 47-0802, Special Exception. Mark Martens noted that the Plan Commission Office had received a letter from the Ron Shriver Family regarding this petition (see attachment D). Mr. Shriver is requesting a special exception for a temporary second dwelling unit on his father's, Larry Shriver, property. The property consists of 67 acres total and is located in an Agricultural District (AG) at 2138 South Old U.S. 31, Rochester, IN. There is an existing house on the property, which Mr. Shriver intends to either remodel or tear down to build a new home (see attachment E). Mr. Shriver would like to utilize the mobile home as a dwelling until such time as the existing house is remodeled or a new home sits in its place. Casi Cramer, Plan Director, explained there is an access road/farm lane that leads back to the existing house from Old U.S. 31 (see attachment F). Casi stated that Mr. Shriver had already sat the mobile home on the property before receiving any permits and he and his family would like to continue to live in the mobile home until they can either remodel the old existing home or build a new home. Mr. Shriver will be doing the work himself and told Casi that it will probably take him close to two years to finish the project. Casi explained if the special exception is approved Mr. Shriver will have to meet all the regulations

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

stipulated by the Fulton County Zoning Ordinance, the Fulton County Building Code, and the Fulton County Health Department. The mobile home currently meets the required setbacks, but will need to obtain the proper permits required for its placement.

It is the Plan Director's recommendation to approve the special exception with the following conditions: 1) Mr. Shriver is required to adhere to all of the County Ordinances pertaining to the placement of the mobile home; and 2) the mobile home is never used as a rental unit; and 3) the mobile home be utilized as a dwelling for no one except Mr. and Mrs. Daniel Shriver; and 4) the mobile home is either removed or a renewal requested, no later than two years from the date of the public hearing. Casi Cramer noted that the Board could place another condition on Mr. Shriver regarding the septic and well facilities, which would state that those facilities have to be up, and working within for example, 30 days. Casi said it is the Health Department's job to enforce that those facilities be in working condition, but the Board can place it as an additional condition stating if the facilities are not in working condition after that 30 days, the Plan Commission Office can put them in violation.

Mark Martens asked if Mr. Shriver had anything further to add to the Plan Director's report. Daniel Shriver said he had nothing further to add at this time. Larry Shriver explained he has given Daniel the land to live on but it is not deeded in his name yet. Larry said his son wants to have the mobile home to live in until he can remodel the existing house, which has been there for several years and needs a lot of work.

Mark Martens asked the Board members if they had any questions for Mr. Shriver or the Plan Director. Being none, he entertained a motion to open the public hearing portion of the petition. Joe Wegner moved to open the public hearing. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh and Mark Martens being in favor and no one opposing.

Mark asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Carol Shriver, 1333 West 11<sup>th</sup> Street, Rochester, IN, stated that she and her husband own the 95 acres to the south and 18.5 acres to the southeast of the proposed property. She said their main concern is that things are done properly in regards to obtaining all of the correct permits, meeting all of the regulations, and etc. Carol explained that they want to make sure the septic and well are put in correctly and she wants to know who is going to maintain the lane that Daniel and his family will be utilizing as a driveway. Carol noted that she and her family have no objections to Daniel remodeling the existing home or building a new home, they just want to make sure that these things are all done according to the standards. Mark Martens asked for any further comments opposing the petition. Being none, Mark asked for any additional comments from the petitioner or public.

Larry Shriver said the farm lane was put in years ago for the purpose of getting back to the fields and they are not going to change it in any way. Larry explained again that his son only wants to utilize the mobile home until he can remodel the existing home or build a new one for his family.

Mark Martens then asked for Board discussion. Dan Walsh questioned who owns the farm lane. Larry Shriver said the lane was taken off of three other properties years ago and he would not say that any one person owns it. He explained part of the lane came off of the farm on the north side and part off of the farm on the south side. Dan asked if there was a legal right of way back to the property. Larry Shriver stated as far as he knew there was. Mark Martens asked if Casi Cramer had



FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

within the Agricultural District (AG). The variance would be on a proposed split of Mr. Robert Lowe's property located at 8537 South 375 East, Macy, IN. The proposed split will consist of a total of 2.26 acres, which would be split from a tract of land consisting of 29.98 acres. Mr. Atkinson would like to have the opportunity to build a home on this proposed property. Attachment H shows the layout of Mr. Lowe's property and indicates by dash lines the 2.26 acres Mr. Atkinson would like to purchase. Casi Cramer explained Mr. Lowe has previously split (prior to zoning) two other tracts of the original parent tract leaving an area of 2.26 acres in between (see attachment H). The proposed split will meet all of the required AG District standards for a newly created lot, except the width of the lot at the public road. The lot would only be 196.91 feet wide at the public road, while widening to be a total of 204.66 feet at the rear of the lot. Casi noted that Mr. Atkinson would need a variance of 3.09 feet to be in compliance with the Fulton County Zoning Ordinance. She further stated that the measurements did not come from her they came from Terry Weiss, surveyor for R.E. Daake & Associates. Casi explained Mr. Atkinson and Mr. Lowe would have to have a survey done for the proposed split by a professional land surveyor before she can fully approve the split. Dan Walsh questioned if the survey had to be done before the Board approved the petition or if it was before Casi approved it. Casi explained all splits in the county have to receive split approval from the Plan Commission Office and they have to be accompanied by a survey. Dan Walsh questioned then if the variance was for sure 3.09 feet. Casi said yes 3.09 feet is the correct variance that Mr. Atkinson would need. Tom Atkinson said it has been surveyed and 3.09 feet is the correct amount that he needs for his variance. Casi stated a survey has been done but she does not have a copy of it in her office as of yet.

Mark Martens asked if Mr. Atkinson had anything further to add to the Plan Director's report. Tom Atkinson stated he currently lives in the city of Rochester and is requesting a three foot variance so that he may purchase a piece of ground out in the country to build a home. Tom explained he had the survey for the proposed split but it had not been officially approved or recorded yet.

Mark Martens asked the Board members if they had any questions for Mr. Atkinson or the Plan Director. Being none, he entertained a motion to open the public hearing portion of the petition. Dan Walsh moved to open the public hearing. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner and Mark Martens being in favor and no one opposing.

Mark asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for those opposing the petition to do the same. Jim Finke, 3732 East 825 South, Macy, questioned where the entrance or driveway would be located on the proposed property and asked if the variance was needed just because the land was too narrow in the front next to the road. Mark Martens stated the minimum lot width for the AG District is 200 feet so Mr. Atkinson needs a variance of 3.09 feet in the front. Casi Cramer said the entrance would come off of 825 South unless Mr. Atkinson was granted some type of easement by Mr. Lowe. Jim Finke asked if this variance would change the classification of the land from AG to residential. Casi Cramer said it is all AG and would stay as agricultural. Mark Martens asked for any further comments opposing the petition. Being none, Mark asked for any additional comments from the petitioner or public.

Tom Atkinson explained he does not plan on changing the land that much and if he decides to put a home on the property it will be a small home for himself.

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

Mark Martens entertained a motion to close the public comments. Joe Wegner moved to close the public comments. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion. Dan Walsh questioned how long the proposed lot would be. Casi Cramer stated it would be four hundred and ninety feet and it meets the requirements. Mark asked for any further Board discussion. Being none, he entertained a motion to approve, deny, or table the petition.

Joe Wegner moved to approve the request for development standards variance, on Docket #BZA 48-0802 Tom Atkinson, of 3.09 feet off of the minimum lot width for the creation of a new tract of land located at, 8537 S 375 E, Macy, IN, which is located in the Agricultural District (AG). Dan Walsh seconded the motion.

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled I). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Joe Wegner	Yea
Dan Walsh	Yea
Mark Martens	Yea

The motion to approve the request for development standards variance, on Docket #BZA 48-0802 Tom Atkinson, of 3.09 feet off of the minimum lot width for the creation of a new tract of land located at, 8537 S 375 E, Macy, IN, which is located in the Agricultural District (AG) passed with three votes in favor and no one opposing.

IN RE: NEW BUSINESS

BENJAMIN RAMER  
DEVELOPMENT STANDARDS VARINACE

Benjamin Ramer, Docket #BZA 49-0802, Development Standards Variance. Mr. Ramer is requesting a development standards variance for the purpose of adding on to an existing barn within the Agricultural District (AG). The property is located at 4131 East 700 North, Rochester, IN and consists of approximately 80 acres. Mr. Ramer will be building a Milk House to the west side of the existing barn and a Milking Area/Feed Room onto the east side of the existing barn (see attachment J). Casi Cramer, Plan Director, explained Mr. Ramer wants to add these rooms onto the northern side of the barn, instead of the southern side so that the flow of truck traffic, both for grain and milk, will have an even flow off of the road. This will also allow the loose livestock and barnyards to be placed off the roadside of the barn. Mr. Ramer is required to meet certain codes in regards to the distance of the feedlot from the stored milk, and building his additions where he has proposed, will help him meet the required codes mandated by the state, as well as, save him the extra expense it would cost to put a gravel drive around to the south side of the barn. Casi explained for Mr. Ramer to be in compliance with the Fulton County Zoning Ordinance he must build the addition a total of 58 feet from the centerline of 700 North. Mr. Ramer's existing barn currently sits 40 feet from the centerline of 700 North so he would need a variance of 18 feet.

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

It is the Plan Director's recommendation to approve the request for the purpose of building a Milk House to the west side of the existing barn and a Milking Area/Feed Room to the east side of the existing barn.

Mark Martens asked if Mr. Ramer had anything further to add to the Plan Director's report. Benjamin Ramer stated he had taken a measuring tape and re-measured how far away his existing barn was from the centerline of 700 North and he is actually four feet closer than he thought he was. Benjamin explained he would actually need a variance of 22 feet from the centerline of 700 North. Benjamin noted that he had the Milk Inspector out at the site to look at the set-up and he gave his approval.

Mark Martens asked the Board members if they had any questions for Mr. Ramer or the Plan Director. Being none, he entertained a motion to open the public hearing portion of the petition. Joe Wegner moved to open the public hearing. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh and Mark Martens being in favor and no one opposing.

Mark asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Jane Trough, 2550 E 700 N, stated that she was a neighbor of the Ramer's and she was in favor of the petition. Mark asked for any further comments in favor of the petition. Being none, he asked for those opposing the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, Mark entertained a motion to close the public comments.

Dan Walsh moved to close the public comments. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion. Being none, he entertained a motion to approve, deny, or table the petition. Joe Wegner moved to approve the request for a development standards variance, on Docket #BZA 49-0802 Benjamin Ramer, of 22 feet off of the front yard setback to erect an addition to an existing barn located in the Agricultural District (AG) at 4131 E 700 N, Rochester, IN. Dan Walsh seconded the motion.

The Administrative Secretary, Erica Ginther, questioned whether or not a variance was still needed for the two silos proposed to be placed on the property. Benjamin Ramer stated he still needed a variance for one silo but not two. Dan Walsh questioned where these silos would be located. There was some discussion regarding where the silos would be placed. Mark Martens asked how big the silos would be. Benjamin Ramer said the silos would be 14 feet in diameter and the one silo he would need a variance from would be placed next to the proposed Feed Room. The Board discussed the situation and decided to add the silo to the motion by saying that the addition and silo only needed to be 22 feet off of the centerline of 700 North. Joe Wegner withdrew his motion and Dan Walsh withdrew his second. Mark Martens then entertained a new motion.

Joe Wegner moved to approve the request for a development standards variance, on Docket #BZA 49-0802 Benjamin Ramer, of 22 feet off of the front yard setback to erect an addition to an existing barn and two silos located in the Agricultural District (AG) at 4131 E 700 N, Rochester. Dan Walsh seconded the motion.

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

The Board then proceeded to fill out their Findings of Fact Forms (see attachments labeled K). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Dan Walsh	Yea
Joe Wegner	Yea
Mark Martens	Yea

The motion to approve the request for a development standards variance, on Docket #BZA 49-0802 Benjamin Ramer, of 22 feet off of the front yard setback to erect an addition to an existing barn and two silos located in the Agricultural District (AG) at 4131 E 700 N, Rochester, passed with three votes in favor and no one opposing.

IN RE: PLAN DIRECTOR REPORT

Casi Cramer presented the Board with an update of permits, applications, violations, and complaints that have occurred in the Plan Commission Office (see attachment L).

ADOPTION OF COLLECTIVE FINDINGS OF FACT & CONCLUSIONS OF LAW

Greg Heller, BZA Attorney, explained that the statute in the Zoning Ordinance requires the Board to create written findings of fact, which each Board member does individually before they vote on their motion. Greg said it has come to his attention that those written findings of fact should be collective findings of fact adopted by the Board. He explained at some point the individual collective findings of fact should be put together with the evidence that occurred making it one collective findings of fact. Greg stated the Board has a copy of the collective findings of fact for the Bryan Tam petition and he would like for each member to read through that (see attachment M). After each member has read through the collective findings of fact for the Bryan Tam petition they need to sign the original copy if they agree with what is said within the body. Greg said Mark Martens agreed with two of the four criteria on his individual findings of fact sheet so he would need to specify that he agrees with #2 and #4 of the criteria but disagrees with #1 and #3. The Board members then proceeded to read and sign the Collective Findings of Fact for the Bryan Tam petition.

It is duly noted there were no Public Comments or Board Comments given at this time.

Being no further business to come in front of the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn the September 11, 2002 Board of Zoning Appeals meeting. Dan Walsh moved to adjourn the September 11, 2002 Board of Zoning Appeals meeting at 9:05 P.M. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
SEPTEMBER 11, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST:

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Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, OCTOBER 9, 2002

7:00 P.M.  
COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR:

*July 10, 2002*  
&  
*September 11, 2002*

OLD BUSINESS

NEW BUSINESS:  
*Ted Leiter (50-0902)*  
*114 E Neighbor Association (51-0902)*

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 9<sup>th</sup> day of October 2002 at 7:00 P.M., in the Commissioners/Council Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:12 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Debbie Barts; Linda Herd; and Joe Wegner. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller.

IN RE: MINUTES

07/10/02

Chairman, Mark Martens, called for any additions or corrections to be made to the July 10, 2002 Board of Zoning Appeals minutes. Being none, Dan Walsh moved to approve the July 10, 2002 Board of Zoning Appeals minutes. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, Linda Herd, and Mark Martens being in favor and no one opposing.

IN RE: MINUTES

09/11/02

Mark Martens called for any additions or corrections to be made to the September 11, 2002 Board of Zoning Appeals minutes. The Administrative Secretary, Erica Ginther, noted on page 1 after the listing of Board members present it should state, "**It is duly noted that Debbie Barts and Linda Herd were absent.**" Erica further noted that on page 8 at the top of the page it gives the address 8537 South 825 East and it should be **8537 South 375 East**. The above stated address change was also made in two other places on page 9. Being no further corrections, Joe Wegner moved to approve the September 11, 2002 Board of Zoning Appeals minutes with the noted corrections. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh, Linda Herd, Debbie Barts, and Mark Martens being in favor and no one opposing.

IN RE: OLD BUSINESS

APPOINTMENT OF SECRETARY

Mark Martens stated that the Board needed to officially appoint a member as their Secretary. Mark asked for any volunteers willing to take the title of Secretary. Dan Walsh moved to nominate Debbie Barts as Secretary. Joe Wegner seconded the nomination. Mark Martens asked for any other nominations. Being none, he entertained a motion to close the nominations for Secretary. Joe Wegner moved to close the nominations for Secretary. Dan Walsh seconded the motion. Mark Martens then entertained a motion to appoint Debbie Barts as the Board of Zoning Appeals Secretary. Dan Walsh moved to appoint Debbie Barts as the Board of Zoning Appeals Secretary. Joe Wegner seconded the motion. Motion approved as follows: Dan Walsh, Joe Wegner, Linda Herd, Debbie Barts, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

IN RE: NEW BUSINESS

TED LEITER  
DEVELOPMENT STANDARDS VARIANCE

Ted Leiter, Docket #BZA 50-0902, Development Standards Variance. Mr. Leiter is requesting a development standards variance of ten (10) feet for the purpose of adding on an eighteen foot by sixteen foot (18' x 16') washroom to his existing home. The home is located within a Rural Residential District (RR) at 11081 East State Road 14, Akron, IN 46910. The property consists of approximately two and a half acres (2.5). The required side yard setback is equal to fifteen feet and existing house currently sits within five feet of the side property line. If granted the variance Mr. Leiter's addition will sit a total of five feet from the side property line. Casi Cramer, Plan Director, presented the Board with a rough sketch of the proposed site (see attachment A). Casi noted that the addition would be built flush with the existing house. She explained that originally there was a wood deck sitting in the area where the proposed washroom will sit. The wood deck was torn off to make room for the washroom (see attachment B). Casi showed the Board an overhead of the approximate side property line (see attachment C). The proposed addition will meet all other required setbacks and zoning regulations. It is the Plan Director's recommendation that the Board approve the requested variance of ten feet for the purpose of building an eighteen foot by sixteen foot addition onto the east side of the existing home.

Mark Martens asked if Mr. Leiter had anything further to add to the Plan Director's report. Ted Leiter stated the reason for building a washroom on the back of the house is so that his wife does not have to go up and down the stairs to do laundry anymore. Currently the washer and dryer are downstairs in the basement. Ted said he had nothing further to add.

Mark asked for any Board member questions to Mr. Leiter or Plan Director. Being none, he entertained a motion to open the Public Comments. Joe Wegner moved to open the public comments. Debbie Barts seconded the motion. Motion carried as follows: Joe Wegner, Debbie Barts, Dan Walsh, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing.

Charlotte Hammond, 1318 S 1075 E Akron, feels this would be a nice improvement for the Leiter's and this improvement would not be hurting any of the surrounding neighbors.

William Kelly, 13177 W State Road 114 Akron, stated he was in favor of the petition. Mark Martens asked for any further comments in favor of the petition.

Being none, Mark asked for those opposing the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, he asked for any additional comments from the petitioner.

Ted Leiter said he had nothing further to say. Mark Martens then entertained a motion to close the public comments. Dan Walsh moved to close the public comments. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion regarding the petition. Joe Wegner questioned if this addition would just be specifically used as a washroom. Ted Leiter stated it would be a washroom and utility room. Joe Wegner asked how the addition would be constructed. Ted Leiter said there



FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

31, 2000, which stated that Hangtime MX Park had four tracks in existence (see attachment G). This letter helped in determining how many tracks Hangtime MX Park had before zoning, compared to how many they currently have. Casi was questioned about the county's noise, air, and odor pollution regulations. Casi's decision was that she had no record of what the measurements of the noise, air, and odor pollution were prior to zoning, compared to now. Therefore, Casi could not place the Hangtime MX Park in violation for expanding their use more than what was already in existence prior to zoning. Casi noted that the Fulton County Health Department had sent Mrs. Linda Kelly a letter regarding her complaint about dust and fumes coming from the racetrack (see attachment H). Casi said Wesley Burden, Fulton County Health Department Environmentalist, contacted the Indiana Department of Environmental Management (IDEM), which is the agency that has jurisdiction over air pollution in the state. IDEM does not have any regulations regarding dust or exhaust fumes. Wesley Burden told Mrs. Kelly that with no regulations, or rules concerning racetrack fumes, his department did not have any authority to act on her complaint. Mrs. Ross thought that Hangtime MX Park was in violation of Article 5, Section 5.7 PS-01 that states the following:

5.7 Performance Standards (PS)

PS-01: All uses established or placed into operation after the effective date of this Ordinance shall comply with the following performance standards in the interests of protecting public health, safety, and general welfare and lessening damage to property. No use on a property shall exhibit obnoxious characteristics to the extent that it constitutes a public nuisance or interferes with reasonable enjoyment of neighboring properties. No use in existence on the effective date of this Ordinance shall be altered or modified to conflict with these standards. The Right to Farm laws may supercede these regulations as they pertain to farming/agricultural uses.

- A. Air Pollution: No use on a property shall release fly ash, dust, smoke, vapors, noxious, toxic or corrosive matter or other air pollutants in such concentration as to be detrimental to health, animals, vegetation or property, or conflict with public air quality standards.
- D. Noise: No use on a property shall produce noise in such a manner as to be objectionable because of volume, frequency, intermittence, beat, shrillness, or vibration. Such noise shall be muffled or otherwise controlled so as not to become detrimental. Public safety sirens and related apparatus used solely for public purposes shall be exempt from this standard.
- E. Odor: No use on a property shall emit across lot lines any gas or matter with a bad odor in such quantity as to be readily detectable at any point along such lines.

Casi Cramer explained she has to know what the levels of pollution were prior to zoning to be able to say that Hangtime MX Park is now exceeding those levels. Mrs. Ross felt that Hangtime MX Park was also in violation of the Fulton County Zoning Ordinance Article 9, Section 9.3 (A) and Article 9, Section 9.5 (A), which state the following:

9.3 Nonconforming Buildings, Structures, and Uses of Land

A legal nonconforming building, structure, or use of land may continue provided that it remains the same or fits within the below described tolerances.

- A. Any legal nonconforming building(s), structure(s), or use(s) of land shall not be enlarged or altered in a manner that increases its nonconformity, but any building(s), structure(s), or use(s) of land, or portion thereof, may be altered to decrease its nonconformity.

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

9.5 Nonconforming Uses of Structures, Land, or Structures and Land in Combination

Any continuous, lawful use of structures, land, or structures and land in combination established prior to the effective date of this Ordinance or its subsequent amendments that is no longer a permitted use in the district where it is located shall be deemed a Legal Nonconforming Use. A legal nonconforming use may continue provided that it remains otherwise lawful, subject to the following conditions.

A. In the case of a legal nonconforming use of structure, the structure may be expanded up to a total of twenty percent (20%) of the floor area on the date of adoption of this Ordinance. Any expansion(s) equaling twenty percent (20%), or less, of the total floor area existing on the date of adoption of this Ordinance shall conform to all applicable development standards, unless a variance of development standards is received from the Board of Zoning Appeals. If the structures are a commercial or industrial use in a residential district, section 5.10 (PK-01, PK-02, PK-03, PK-04 and PK-05) shall be used for parking standards. Any expansion(s) equaling more than twenty percent (20%) of a structure used in conjunction with a legal nonconforming use, must then conform to all of the regulations within the Fulton County Zoning Ordinance. (i.e. Zone District permitted uses, special exception uses, development standards, etc.); otherwise...

To be sure that her decision was correct in regards to the expansion of Hangtime MX Park, Casi asked BZA Attorney, Greg Heller, for his interpretation of the word expansion as it pertained to the Hangtime MX Park or any racetrack. Greg advised Casi to consider an expansion of this type of business, as the addition of any racetrack. Based on that advice, Casi made the administrative decision that Hangtime MX Park was still a grandfathered use under the Fulton County Zoning Ordinance; due to the fact all four of the current racetracks were in existence prior to the implementation of zoning.

Mark Martens asked if Brenda Ross had anything to add to the Plan Director's report. Brenda Ross said the 114 East Neighbor Association was appealing the determination made by Casi Cramer in regards to the expansion of the racetrack. She stated that through her research she found that courts consistently limit pre-existing nonconforming uses of the property only to areas in which they have been used at the time of the Zoning Ordinance adoption. She presented a manila folder to each Board member containing the court cases in which she had found her information (a copy of these cases will be kept in the petitioner's file). Brenda said by adding and expanding the Grand Prix track the nonconforming use was impermissibly expanded and the Association feels the nonconforming use of the newly used area must seize. Brenda noted Hangtime MX Park does not show any Grand Prix races being on their race schedule until June 30, 2001. The first Grand Prix race, which was held at the northern part of the property closest to the adjacent properties, was run on May 26, 2002. Brenda said that Hangtime MX Park had open practice every Thursday from 10:00 A.M. to 6:00 P.M. in 2000, in 2001 and 2002 they extended their hours to 1:00 P.M. to 10:00 P.M. The Neighbor Association feels that by extending the practice hours Hangtime MX Park has expanded. Brenda stated the intent of the Agricultural District (AG) is to protect them from conflicting land uses that are non-agricultural and protect the neighboring properties and owners. Brenda voiced concern about the mounds of dirt placed next to her west property line and the trenches that were created to control drainage of run-off water. The Neighbor Association is asking the Board to enforce the Zoning Ordinance in regards to a nonconforming use and its expansion. The Neighbor Association may not like the racetrack, but they agreed that it would be permissible, as long as it stayed within the area where it originally was at the time of the adoption of zoning in the county.

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

Mark Martens asked for any Board comments or questions to either Brenda Ross or the Plan Director.

Dan Walsh questioned whether the light area detected on the diagrams presented, to the west and up through the middle of the property, was a racetrack. Casi Cramer said she could not say for sure whether the area Dan was questioning was a racetrack or not. Dan stated that Casi then could not say for sure that the light area on the map was never used for racing.

Dan questioned when the aerial photos were taken. Casi thought that they had been taken in the March of 2001. Casi noted that her and Greg Heller's interpretation was that there were four tracks in October of 2000 and there are still four tracks on the property. Casi explained it does not matter if the tracks have changed names, example in October of 2000 it was a mud track now in October of 2002 it is a Grand Prix track.

Mark Martens asked if an increased use was measured by a physical standpoint or not. Greg Heller said the legal issue involved is whether the use has been enlarged or altered to create nonconformity. Greg explained the answer is not black and white, because it is basically up to the trial court to define what the scope of that nonconforming use was at the time that the Ordinances were enacted. Greg stated one way that this could be argued is if you move a track anywhere on this property that is increasing its nonconformity, but that is not the black and white answer. Greg further explained another way the issue could be argued is that you are not increasing the nonconformity by moving the track, so long as you are not increasing the number of tracks. Greg said when he is asked that question; he cannot give a simple answer because that is the legal question. Greg explained because there is no objective evidence showing what existed at the time the Ordinance was enacted, his interpretation of defining the nonconformity was by the number of tracks on the property. Mark Martens said he would like to see how many races were conducted and how many participants were involved prior to zoning. He would also like to see how many races are currently conducted and how many participants are involved in those races now. Mark asked the Read's if they could provide the Board with that information. Larry Read stated he did not have the information on him at the meeting but it could be easily determined. Larry explained as any business would expect, he expects his number of riders and races to grow by the year, so he would ask not to be penalized for that reason. Larry also stated that the Grand Prix track was laid out and used prior to zoning. He noted that their race schedules are made out in the spring and events get added and deleted from it throughout the season. He went on to say that the motorcycles raced have to be manufactured at certain decibels, which is 96 DBA. Larry said it is possible to carry on a conversation with someone, without yelling, when the motorcycles are running 100 feet away from where you stand. He said he has even had conversations with people when the motorcycles are only 30 to 40 feet away and had no problems.

Debbie Barts questioned if the Grand Prix races lasted longer than any of the other races that may be conducted on those tracks. Larry Read said no all of the races run around about an hour each.

Debbie Barts asked if Mr. Read had ever run two races at the same time on the property. Larry said he has only run two races at one time once, but he does not do it often.

Debbie questioned how many races were run at night. Larry replied approximately eighteen races were ran during nighttime hours.

Dan Walsh asked if the decibels of the motorcycles were measured at the racetrack. Larry stated that they do not measure the decibels at the racetrack due to the fact that the motorcycles have to come out of the factory with only a certain amount of decibels.

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

Brenda Ross noted that the 2000 race schedule lists four different types of races held on the property and the 2001 race schedule lists five. Mark Martens asked for any further Board comments or questions.

Being none, Mark entertained a motion to open the Public Hearing. Joe Wegner moved to open the public hearing. Dan Walsh seconded the motion. Motion carried as follows: Joe Wegner, Dan Walsh, Linda Herd, Debbie Barts, and Mark Martens being in favor and no one opposing.

Mark asked for those in favor of the petition (meaning in favor of the administrative appeal) to please rise and state their name, address, and reason for attending the public hearing.

Linda Kelly, 13177 W State Rd 114 Akron, said the Grand Prix racetrack is only approximately 70 feet from her southwest fence line. She presented pictures to the Board members showing where the racetrack is located near her property line. Linda Kelly noted that the light area indicated on the aerial maps is a road that Mr. Royer, the previous owner, used to get back to his property. She voiced concern about them being allowed to move the racetrack wherever they wanted on the property and about the noise some of the races create.

Eleanor Fetrow, 12181 E State Rd 114 Akron, she lives between Brenda Ross and the Kelly's. She said she bought her home on May 14, 2000 and was aware of the racetrack but was not concerned with it at the time because all of the tracks were back on the southern portion of the property. Eleanor said the noise level to her at that time sounded like a swarm of bees. She explained on May 26 her grandchildren were over, and when the Grand Prix race started, they said it was too loud and had to go inside to get away from the noise. She finished by saying that compared to the past years, the noise level has changed drastically within the last year. Mark Martens asked if Ms. Fetrow had any idea how close the racetrack was to her property. Eleanor Fetrow said the racetrack was approximately 80 feet from her property.

Melinda Cabrera, 13202 E State Rd 114 Akron, said she and her family have lived in this area for twenty years. She explained in the past to be able to see anything that was going on at the racetracks you would have to stand on a four foot high picnic table, but now she can stand on ground and see the activities going on. Melinda also stated that the racetrack now has a louder PA system.

Gary Sriver said he lives two miles west of Akron on 1000 E and on a very calm night with the correct wind direction, he can hear the races being conducted at Hangtime MX Park. Gary noted Mr. Read said the track was located 200 feet from the nearest property line, which is only three quarters of a football field. He voiced concern about the noise level. Gary asked if there was any particular reason why the Grand Prix track had to be so close to the adjacent properties when the property consists of 138 acres.

Arlene Lytle, 13252 E State Rd 114 Akron, voiced concern with the track being located so close to the adjacent properties. Arlene said she does not understand why the racetracks have to be so close to the adjacent properties, when there is 138 acres of property that can be used.

Steve Hartzler, 1156 S 925 E Akron, stated that he can not hear the activities going on at the racetrack. He voiced concern about changing the racetracks and moving them closer to the adjacent properties. Steve said with 138 acres of land there should be some way to keep those tracks back off of those adjacent properties.

Pete Cabrera, 13202 E State Rd 114 Akron, said he can stand in his driveway and watch all of the activities being conducted on the racetracks where as before he could not see anything without standing on something. Pete stated that not only did the PA system get louder but now the lighting system is brighter too. He voiced concern about the tracks being too close to the adjacent properties.

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

William Kelly, 13177 W State Rd 114 Akron, said when the racetrack was first started the Read's stated that all the races would be held back behind the hill and would not be viewable from his home. William stated as time went by, it got worse.

Judy DeVries, 7585 E 675 N Rochester, stated she does not live in this area, but she does attend church with the people who do live in that area. Judy would like to see the issue addressed of why there were eight-foot high mounds of dirt piled next to Brenda Ross's property line. Mark Martens asked for anyone else speaking in favor of the petition to do so at this time.

Being none, Mark asked for those opposing the petition to please rise and state their name, address, and reason for attending the public hearing.

Robert Keen said he is a racer and he knows for a fact that it is part of MX racing procedure to change the tracks to prevent erosion from occurring, as well as, to keep the interest of the riders. Robert feels that the Read's do a fantastic job of putting on their races by keeping the tracks watered to prevent dust from rising and etc.

Larry Read stated he would like to address a couple of issues that were pointed out. Larry explained the reason the dirt mounds came about was due to the fact that Mrs. Ross complained to the State of Indiana because he had some billboard signs on his property. He went on to say that someone from the state came out to his property and told him he was in violation because his billboards could be seen from the road. Therefore, he had to come up with some way to make those billboards not viewable from State Road 114. Larry stated the trenches that were created to build those mounds are on his property and he is not finished with them yet there is still some work that needs to be done. Larry said he has a hard time understanding how Mr. Cabrera can see all of the activities going on with those mounds of dirt being there. Larry explained that he had measured how far away his track was from the Kelly's property line or fence and it was 200 feet plus. He noted that they have not changed their lighting system, the lighting system that is there now is the one that has been there since the day Hangtime MX Park opened. Larry does not feel that the Board should have a right to be able to limit his livelihood of how many participants and races he can conduct on his tracks. He noted two of the County Commissioners visited the site to see what their thoughts were regarding the situation; measurements were then taken of how far the track was from the property lines, and the Commissioners then informed Mrs. Ross and Mr. Kelly that he would not be running any races closer than 200 or 225 feet of their property lines. Larry said his indication was that the Commissioners were still waiting for an answer from Mrs. Ross and Mr. Kelly regarding that situation; whether they would accept that offer or not.

Joyce Read noted that there are people who have homes directly behind (south) their racetrack and they have never complained about any activities, lights, or noise being conducted on the racetrack. She explained the lights have never been changed as far as the bulbs, but they have moved the position of the lights from time to time. Joyce explained when the County Commissioners came out to the property they measured how far away the track was from the edge of the property lines; Brenda Ross's was 265 feet away and Mr. Kelly's was 225 feet away. Joyce stated that the Grand Prix track was in existence before zoning went into effect.

Charlotte Hammond, 1318 S 1075 E Akron, questioned if requiring the Read's to keep their tracks at the southern end of their property would constitute as a takings of their property. Greg Heller said he did not think it would necessarily because zoning is a police power. Greg feels when determining if it is a takings of the property, that leads back to the issue of whether it is an expansion of a nonconforming use or not. Mark Martens asked if there were any more comments opposing the petition. Being none, he asked Mrs. Ross if she had any rebuttal.

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

Brenda Ross said the dirt mounds were extended 460 feet back to the racetrack, which are located directly behind her home. She stated that she did not find anywhere in the case laws that she researched where it said that the addition of another track was what constituted the expansion of a nonconforming use. Brenda noted that she shows or has no evidence showing that there was ever a racetrack located on the north end of the property. Brenda questioned why Grand Prix races were not listed on the race schedule in 2000 if the track was in existence before zoning took effect.

Casi Cramer explained that she had the Plan Commission and BZA's attorney interpret the Ordinance because not everything is going to be black and white. She spoke to the County Commissioners, who went out and measured how far away the track was from these property lines, and it was at least 200 feet away from both Mrs. Ross and Mr. Kelly's properties. She explained that how far away the track is located from the adjacent property lines is a moot point, due to the fact, that the way the Ordinance was interpreted was that an expansion would be any additional track. Casi said there were four tracks existing before zoning and there are still only four tracks located on the property. She noted it does not matter what type of race was run on the tracks in the past, what matters is the number of tracks that are located on the property. Casi feels that a lot of the issues raised tonight could be handle amicably in a private manner between the neighbors and the Read's.

Mark Martens then entertained a motion to close the public comments. Joe Wegner moved to close the public comments. Debbie Barts seconded the motion. Motion carried as follows: Joe Wegner, Debbie Barts, Linda Herd, Dan Walsh, and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion regarding the petition. The Board had much discussion regarding whether they felt it was an expansion of the race schedule and races conducted, or if they felt it was not an expansion because an additional track had not been created. The Board also discussed the noise situation and felt that they could not make a decision, without having some concrete evidence that the noise is louder now than it was prior to zoning. Joe Wegner stated he would like a better explanation of why the dirt mounds were created. Casi Cramer explained the dirt mounds came about when the Commissioners visited the site and they were trying to come up with an amicable solution to keep the peace between the neighbors and the racetrack. She said the Read's had discussed creating the mounds before because they felt that it would help cut down on the noise, plus it would help act as a visual barrier from the adjacent properties. Joe asked if that was an agreement made then by Mrs. Ross and the Read's. Casi stated that as far as she knew Mrs. Ross had never gotten back with the Commissioners regarding this situation. Mrs. Ross said that she did contact Mr. Showley and told him that she did not agree with his terms. Casi explained that Mr. Read had started one of the dirt mounds, however, due to the complaint filed with the State regarding the billboards. Joe Wegner asked if when the racetrack was first opened they had four tracks, but only ran on two of the tracks. Casi stated she is unsure of what races were run and on what tracks they were run, but her issue is the fact that all four tracks were created prior to zoning and there are still four tracks currently there. Mark Martens asked for any further Board discussion. Being none, he entertained a motion regarding the petition.

Joe Wegner moved to table the request for an appeal of an administrative decision, on Docket #BZA 51-0902 114 East Neighbor Association, until the next regularly scheduled meeting, November 13, 2002 allowing more time to obtain information regarding the situation. Dan Walsh seconded the motion. The Board then took a hand vote.

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 9, 2002

The motion to table the request for an appeal of an administrative decision, on Docket #BZA 51-0902 114 East Neighbor Association, until the next regularly scheduled meeting, November 13, 2002 allowing more time to obtain information regarding the situation passed with five votes in favor and no one opposing.

It was the Board's consensus that at the November 13, 2002 meeting that the following information be present: a copy of the Commissioners' discussion; the number of races that occurred in 2000, 2001, and 2002; the number of participants in 2000, 2001, and 2002; an aerial map, if one is present, of Hangtime MX Park; a clean copy of the aerial map presented tonight; the history of activity on the fourth track; and the exact measurements from the racetracks to the adjacent properties.

IN RE: PLAN DIRECTOR REPORT

It was decided that a Special Meeting would be held on October 12, 2002 at 10:00 A.M. to research Hangtime MX Park.

Casi Cramer presented the Board with an update of permits, applications, violations, and complaints that have occurred in the Plan Commission Office (see attachment I).

It is duly noted that there were no Public Comments or Board Comments presented.

Being no further business to come in front of the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn the October 9, 2002 Board of Zoning Appeals meeting. Joe Wegner moved to adjourn the October 9, 2002 Board of Zoning Appeals meeting at 10:02 P.M. Debbie Barts seconded the motion. The motion carried as follows: Joe Wegner, Debbie Barts, Linda Herd, Dan Walsh, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST:

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Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
OCTOBER 12, 2002  
SPECIAL MEETING

**FULTON COUNTY  
BOARD OF ZONING APPEALS**

**SPECIAL MEETING**

**SATURDAY, OCTOBER 12<sup>TH</sup>, 2002**

**10:00 A.M.**

**HANGTIME MX PARK  
13253 EAST STATE ROAD 114  
AKRON, IN 46910**

**OBSERVATION OF GRAND PRIX RACE AT  
HANGTIME MX PARK**

**RECESS**

FULTON COUNTY BOARD OF ZONING APPEALS

OCTOBER 12, 2002

SPECIAL MEETING

The Fulton County Board of Zoning Appeals met on Saturday the 12<sup>th</sup> day of October 2002 at 10:00 A.M. at Hangtime MX Park, 13253 East State Road 114, Akron, IN 46910. Vice Chairman, Dan Walsh, called the meeting to order at 10:10 A.M. The following members were present: Vice Chairman, Dan Walsh; Secretary, Debbie Barts; Joe Wegner; and Linda Herd. Also in attendance was Plan Director, Casi Cramer. It is duly noted that the following members were absent: Chairman, Mark Martens; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller.

The Board of Zoning Appeals met to research the activities, including the Grand Prix Race ongoing at the time of visit, and the placement of the other three tracks at Hangtime MX Park. The BZA members measured the far west lot at 56 feet north of the Grand Prix track, Mrs. Kelly's lot at 159 feet north of the Grand Prix track and Mrs. Ross's rear property line sits 123 feet east of the Grand Prix track. With no further business to come before the Board, Dan Walsh entertained a motion to adjourn the special meeting. Joe Wegner moved to adjourn the October 12, 2002 Board of Zoning Appeals Special Meeting at 11:10 A.M. Debbie Barts seconded the motion. Motion carried as follows: Joe Wegner, Debbie Barts, Linda Herd, and Dan Walsh being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST: \_\_\_\_\_  
Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
NOVEMBER 13, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, NOVEMBER 13, 2002

7:00 P.M.

COMMISSIONERS/COUNCIL ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR:

*OCTOBER 9, 2002*

*&*

*OCTOBER 12, 2002 Special Meeting*

**OLD BUSINESS**

*114 E Neighbor Association (51-0902)*

**NEW BUSINESS:**

*Shane & Julie McBunette (52-1002)*

**PLAN DIRECTOR REPORT**

**PUBLIC COMMENTS**

**BOARD COMMENTS**

**ADJOURNMENT**

FULTON COUNTY BOARD OF ZONING APPEALS  
NOVEMBER 13, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 13<sup>th</sup> day of November 2002 at 7:00 P.M., in the Commissioners/Council Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:03 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Secretary, Debbie Barts; Linda Herd; and Joe Wegner. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller.

IN RE: MINUTES 10/09/02

Chairman, Mark Martens, called for any additions or corrections to be made to the October 9, 2002 Board of Zoning Appeals minutes. Being none, Dan Walsh moved to approve the October 9, 2002 Board of Zoning Appeals minutes. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, Linda Herd, and Mark Martens being in favor and no one opposing.

IN RE: MINUTES 10/12/02

Mark Martens called for any additions or corrections to be made to the October 12, 2002 Board of Zoning Appeals Special Meeting minutes. Dan Walsh questioned whether or not the measurements taken that day needed to be in the minutes. Casi Cramer stated that the Board could put those measurements in the minutes if they so wished. Mark Martens said he wanted those measurements added in the minutes. Debbie Barts also noted that in the first sentence of the second paragraph "Gran Prix Race" should be "Grand Prix Race". Casi said after the first sentence in the second paragraph they would add the following: **The BZA members measured the far west lot at 56 feet north of the Grand Prix track, Mrs. Kelly's lot at 159 feet north of the Grand Prix track and Mrs. Ross's rear property line sits 123 feet east of the Grand Prix track.** The Board agreed with the above stated change. The Administrative Secretary, Erica Ginther, stated that she would make the changes and mail the Board members a revised copy of the minutes. Mark Martens then entertained a motion regarding the minutes. Dan Walsh moved to approve the October 12, 2002 Board of Zoning Appeals Special Meeting minutes with the noted changes. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Linda Herd, Joe Wegner, and Mark Martens being in favor and no one opposing.

IN RE: OLD BUSINESS 114 E NEIGHBOR ASSOCIATION  
ADMINISTRATIVE APPEAL

114 East Neighbor Association, Docket #BZA 51-0902, Administrative Appeal. Mark Martens felt this petition was a moot point due to the fact the situation had been settled between Mr. and Mrs. Read and the 114 East Neighbor Association. Mark noted that there was an agreement drawn up regarding this situation, and it was signed by all of the members of the Association and Mr. Read (see attachment A). Brenda Ross stood and spoke representing the 114 East Neighbor Association. She said that the Association is asking for a continuation of the Administrative Appeal. Mark

FULTON COUNTY BOARD OF ZONING APPEALS  
NOVEMBER 13, 2002

Martens asked for Greg Heller's, BZA Attorney, opinion regarding this situation. Greg stated the Board has three options. They can table the petition, make a ruling in favor, or make a ruling opposing the original petition. Greg explained Mrs. Ross is wanting to table the petition for another month in order to "fine tune" the agreement that was drawn up between the Association and the Read's. Brenda Ross said the Association wants to get the document recorded in the Fulton County Recorder's Office in order to make it binding. Mark Martens stated with that understanding he would entertain a motion to table the petition until the December 11, 2002 Board of Zoning Appeals meeting. Debbie Barts questioned whether or not the Board could make a decision on the petition tonight with a commitment saying the agreement would be recorded in the Recorder's Office. Greg Heller explained the agreement is between the Read's and the Association so the Board cannot make it a commitment to have the agreement recorded. Mark Martens said he would feel more comfortable if he had a document from all of those that signed the agreement stating that they wanted to continue with this petition next month. Greg Heller stated what Mark said was understandable, but he did not think it was necessary. Greg explained if the Association and the Read's come to an agreement regarding the situation, then at that point the Board no longer has jurisdiction over the petition. Mark left the floor open for a motion to table the petition.

Dan Walsh moved to table the request for an appeal of an administrative decision, on Docket #BZA 51-0902 114 East Neighbor Association, until the next regularly scheduled meeting, December 11, 2002. Joe Wegner seconded the motion. Motion carried as follows: Dan Walsh, Joe Wegner, Debbie Barts, Linda Herd, and Mark Martens being in favor and no one opposing.

IN RE: NEW BUSINESS

SHANE & JULIE MCBURNETT  
SPECIAL EXCEPTION

Shane & Julie McBurnett, Docket #BZA 52-1002, Special Exception. Mr. and Mrs. McBurnett are requesting a special exception to operate a kennel in an existing building on their property, 1123 N 400 W, Rochester, IN 46975. The property is located in an Agricultural District (AG) and consists of approximately 20 acres. The proposed kennel will be located in the Northeast corner of the existing 20-acre tract. The kennel will sit approximately 1,170 feet off of County Road 400 West and approximately 500 feet off of County Road 100 North. The property in question is bordered on all other sides by farm fields (see attachment B). In attachment B it shows the existing building, which would be used to house the dogs. Casi Cramer, Plan Director, stated that the McBurnett's have already received a Location Improvement Permit to expand the building to approximately 60' x 60'. It is the Plan Director's recommendation that the Board grant the special exception.

Mark Martens asked if Mr. and Mrs. McBurnett had anything further to add to the Plan Director's Report. Shane McBurnett said he had nothing further to add at this time.

Mark asked for any Board member questions to Mr. and Mrs. McBurnett or the Plan Director.

Dan Walsh questioned how many dogs would be kept in the kennel at one time. Shane McBurnett stated less than 15 dogs would be in the kennel at one time.

Mark Martens asked if the kennel would have regular hours or not. Shane McBurnett said they would not have regular hours, but instead would base it upon appointments.

Dan Walsh questioned whether this proposed kennel would be strictly for breeding and selling dogs, or if it would be a boarding house too. Shane McBurnett said it would not be a

FULTON COUNTY BOARD OF ZONING APPEALS  
NOVEMBER 13, 2002

boarding house; it would only be used for breeding and selling dogs. Mark Martens asked for any further Board comments or questions.

Being none, Mark entertained a motion to open the Public Hearing. Joe Wegner moved to open the public hearing. Debbie Barts seconded the motion. Motion carried as follows: Joe Wegner, Debbie Barts, Linda Herd, Dan Walsh, and Mark Martens being in favor and no one opposing.

Mark Martens asked for those in favor of the petition to please rise and state their name, address, and reason for attending the public hearing. Being none, Mark asked for those opposing the petition to please rise and state their name, address, and reason for attending the public hearing.

Being none, Mark then entertained a motion to close the public comments. Dan Walsh moved to close the public comments. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Linda Herd, and Mark Martens being in favor and no one opposing.

Mark then asked for any Board discussion regarding the petition. Being none, he entertained a motion regarding the petition.

Joe Wegner moved to approve the request for a special exception, on Docket #BZA 52-1002 Shane & Julie McBurnett, to operate a kennel in the existing building located at 1123 N 400 W in the Agricultural District (AG) on approximately 20 acres. Dan Walsh seconded the motion.

The Board members then proceeded to fill out their Findings of Fact forms (see attachments labeled C). The Administrative Secretary, Erica Ginther, conducted a roll call vote:

Linda Herd	Yea
Joe Wegner	Yea
Dan Walsh	Yea
Debbie Barts	Yea
Mark Martens	Yea

The motion to approve the request for a special exception, on Docket #BZA 52-1002 Shane & Julie McBurnett, to operate a kennel in the existing building located at 1123 N 400 W in the Agricultural District (AG) on approximately 20 acres passed with five votes in favor and no one opposing.

It is duly noted that there was not a Plan Director Report or any Public Comments given.

IN RE: BOARD COMMENTS

Dan Walsh questioned where the Board stood with the lawsuit regarding the Confined Feeding Operation. Casi Cramer noted that a brief in opposition had been filed and she would send a copy to all Board members, along with Greg Heller's response once it is completed.

FULTON COUNTY BOARD OF ZONING APPEALS  
NOVEMBER 13, 2002

Being no further business to come in front of the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn the November 13, 2002 Board of Zoning Appeals meeting. Dan Walsh moved to adjourn the November 13, 2002 Board of Zoning Appeals meeting at 7:27 P.M. Linda Herd seconded the motion. Motion carried as follows: Dan Walsh, Linda Herd, Debbie Barts, Joe Wegner, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST:

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Erica A. Ginther, Administrative Secretary

FULTON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 11, 2002

FULTON COUNTY BOARD OF ZONING APPEALS

WEDNESDAY, DECEMBER 11, 2002

7:00 P.M.  
CONFERENCE ROOM

CALL TO ORDER

BOARD OF ZONING APPEALS MINUTES FOR:  
*November 13, 2002*

OLD BUSINESS  
*114 E Neighbor Association (51-0902)*

NEW BUSINESS

PLAN DIRECTOR REPORT

PUBLIC COMMENTS

BOARD COMMENTS

ADJOURNMENT

FULTON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 11, 2002

The Fulton County Board of Zoning Appeals met on Wednesday the 11<sup>th</sup> day of December 2002 at 7:00 P.M., in the Conference Room located in the Fulton County Office Building. Chairman, Mark Martens, called the meeting to order at 7:05 P.M. The following members were present: Chairman, Mark Martens; Vice Chairman, Dan Walsh; Secretary, Debbie Barts; Linda Herd; and Joe Wegner. Also in attendance were: Plan Director, Casi Cramer; Administrative Secretary, Erica Ginther; and BZA Attorney, Greg Heller.

IN RE: MINUTES

11/13/02

Chairman, Mark Martens, called for any additions or corrections to be made to the November 13, 2002 Board of Zoning Appeals minutes. Being none, Dan Walsh moved to approve the November 13, 2002 Board of Zoning Appeals minutes. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Joe Wegner, Linda Herd, and Mark Martens being in favor and no one opposing.

IN RE: OLD BUSINESS

114 E NEIGHBOR ASSOCIATION  
ADMINISTRATIVE APPEAL

114 East Neighbor Association, Docket #BZA 51-0902, Administrative Appeal. Greg Heller noted that this petition was tabled at the November 13, 2002 Board of Zoning Appeals meeting so that the homeowners could clarify the agreement they had made with Hangtime Racetrack. Greg explained if the homeowners have clarified their agreement and wish to withdraw their petition, then there is no further action that needs to be taken by the Board. He stated if the homeowners have not clarified their agreement and wish to proceed with their petition, then the Board is entitled to make a decision based on the Administrative Appeal. Greg went on to say that the Board has to either affirm Casi Cramer's decision that this is not an expansion of a non-conforming use because there continue to be four race tracks or they have to make a decision that states that they disagree with Casi's decision and this is an expansion of a non-conforming use. The Board could also say they do not think that this is an increase of a non-conforming use in this specific instance, but in the future they will consider definitions of an expansion on a case by case basis. Mark Martens noted that the Board had the results from the mediation presented to them last month and he is assuming that the agreement is still in tact.

Brenda Ross stated the Neighbor Association reached the agreement and felt it was a fair agreement at the time. She said their mediator misled them to believe that what they did was totally legal and binding. Brenda explained after checking with an attorney the Association has been consulting with, she found out that the agreement was not totally legal and binding because not all parties involved signed the agreement and it was not notarized. She further noted that there are six people listed on the Read's deed to the land and only one of the six people signed the agreement, which makes the other five people not legally binded to the agreement. Brenda created another agreement with the only change being that a notary line was added, but the Read's refused to sign it. Mark Martens asked Brenda Ross if the Neighbor Association still wanted to continue with the petition then. Brenda Ross stated the Association could not withdraw their petition based on a verbal promise that all of the other owners listed on the deed will abide by the agreement.

FULTON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 11, 2002

Mark Martens asked if the Board members had any questions for Mrs. Ross or Casi Cramer at this time.

Joe Wegner asked if the Board found Casi's determination to be correct, if the Neighbor Association would be in a worse situation then they are now. Brenda Ross replied that the Association would be in a worse situation if that were the Board decision. She stated as it is, they do not have anything that is legally binding and what happens if in a few years Mr. Read decides to retire and hands the business over to one of the other five people listed on his deed. Brenda explained those other five people did not sign anything, so they have no legal obligation to follow the agreement. Greg Heller stated he would not disagree with that.

Mark Martens explained when the Board makes their decision they are either going to uphold Casi Cramer's decision or not. This meaning if the Board agrees with Casi's decision the Reads' will not be put in violation, but if they disagree with Casi's decision, then the Reads' would be placed in violation and degrandfathered. Brenda Ross questioned whether or not the Board could place restrictions on their decision. Mark Martens stated not in this situation because the Neighbor Association is appealing Casi Cramer's decision. Greg Heller explained the appeal is solely based upon Casi's decision that this was not an expansion of a non-conforming use.

Mark Martens then opened the floor for public comments.

William Kelly (13177 E St Rd 114) stated the Reads' are technically expanding their racetracks out so if they are allowed to do that he should be allowed to expand his home without permission. Mark Martens explained the Reads' could not violate the Fulton County Zoning Ordinance. Mark said if someone does violate the Ordinance however they will have to suffer the consequences that may occur. William Kelly feels it is unfair that the racetracks can be moved closer to his property line, but he is not allowed to expand his home.

Brenda Ross (13271 E St Rd 114) asked if Mark Martens was saying he did not feel as if the Reads' had violated the Zoning Ordinance. Mark said it is his understanding that they are not in violation of the Zoning Ordinance. Casi Cramer stated, that was her decision that they were not in violation of the Ordinance and that is what the Neighbor Association is appealing. Mark Martens explained as far as setbacks go the Reads' are not in violation.

William Kelly feels the racetrack is lowering the neighbors' property values. Mark Martens stated he does not know that for sure. Mark explained the Board's focus is on whether Casi's decision was correct or not.

Arlene Lytle (13252 E St Rd 114) explained that during the mediation with the Reads', Casi Cramer, Gary Sriver, and the Neighbor Association thought at that time the agreement was legally binding. She further noted that the Association thought they would be deciding on the amount of space that could be utilized by the Reads'. Arlene stated as the meeting opened Mr. Read presented his plan to move the track back 700 feet and the Association was told by Mr. Read they had to take it or leave it. The Association agreed to Mr. Read's proposal and later found that the agreement was not binding, so they all went and signed the agreement in front of a notary but Mr. Read refused to sign. Arlene said the Association carried out their part but Mr. Read will not carry out his part to sign the agreement. She stated the Association is not arguing anything but they want to know why this situation was not taken care of, as it should have been. Greg Heller said that is not a question that this Board is able to answer or should have to answer for the Association. He stated the only question the Board is required to answer is whether the decision made by Casi Cramer was correct or incorrect. Greg feels the Association is asking the Board to do more than they are legally allowed to do.

FULTON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 11, 2002

Linda Kelly (13177 E St Rd 114) asked if the “gentleman’s agreement” that the Association has with the Reads’ is binding or not. Mark Martens said he could not answer that question. Greg Heller feels that it is not his role to say whether the agreement that the Association has with the Reads’ is binding or not. He does not know who all of the owners are for Reads’ Hangtime Raceway but gathering from Mrs. Ross’s comments there are more than just Larry and Joyce Read listed on the deed. Linda Kelly asked if a signature from one of the six owners was enough. Greg explained if this went to court that is probably one argument that could be made that not all of the owners signed, but he can not say which way the court would decide on that.

Debbie Barts questioned if the Reads’ could have the same argument by stating that not all of the surrounding neighbors signed the agreement. Greg Heller feels that is the same type of argument that can be made in court. Greg explained just as he does not know whom the owners of the racetrack are he does not know who constitutes as the Neighbor Association.

William Kelly feels that the Reads’ know they are in violation of the Zoning Ordinance because they proposed to move their racetracks back 700 feet off of the adjoining property lines. Mark Martens stated it could also be looked at as the Reads’ were trying to come to a compromise with the surrounding neighbors. Mark Martens asked for any further comments.

Being none, Mark asked for Board discussion. Debbie Barts asked if the Neighbor Association was not in agreement with the signed document (agreement) and the Board has to make a decision based on Casi Cramer’s decision. Mark Martens asked Brenda Ross if the Neighbor Association was or was not withdrawing the Administrative Appeal. Brenda Ross said the Association is trying to figure out what their options are.

Greg Heller said if Linda Kelly is asking him if this agreement were worthless he would say no, I do not think so. Greg explained anything you take into court could be argued. He stated that the Association has a written agreement and he feels that would carry some weight, but he is unsure how much weight it would carry. Greg went on to say the options of the Association are to table the petition, withdraw the petition, or do not withdraw the petition and the Board will be obligated to make a decision.

Joe Wegner asked if the Association decides to pursue the petition and it was turned down, then would all of the agreements they have with the Reads’ be gone. Greg Heller said that is not necessarily true, but because there is language within that agreement that states there will be no further complaints about the position of the track from the neighbors, it could be considered a breach of that agreement; so it is possible if the Board upholds the decision that either party, meaning the Reads’ or the Neighbor Association, could take the signed agreement to court and ask the court to enforce it. Greg Heller feels that that is not part of the Board’s concern; their decision is to either uphold Casi’s decision in saying that they have not expanded their non-conforming use or to disagree with Casi and say they have expanded their non-conforming use.

Joe Wegner said if the Neighbor Association withdraws their petition now, could they reinstate it at some later time. Greg Heller asked if Joe was asking if the same tract of land and the same instance could be reinstated. Joe Wegner answered yes, the instance questioning Casi Cramer’s decision. Casi Cramer said they would not be able to reinstate on that specific decision because they only have 30 days after she makes her decision to appeal. Casi explained if the Neighbor Association asked her to make another decision based on whether the Reads’ are in violation or not and she again feels the Reads’ are not in violation of the Zoning Ordinance then the clock is reset and the Neighbor Association has another 30 days in which they can appeal her decision. Greg Heller explained this situation is very fact sensitive.

FULTON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 11, 2002

Melinda Cabrera (13202 E St Rd 114) said her son worked at the Reads' racetrack 3 years ago and he said he knew there were only two tracks that existed before zoning. The Reads' are saying that they had all four tracks before zoning took effect. Mark Martens stated the Board would like to know what the Neighbor Association wants to do. Brenda Ross asked if they could step out into the hall to discuss the situation amongst themselves. Mark replied by saying yes you may.

Arlene Lytle said the Neighbor Association has the written agreement and if they decide to drop the Administrative Appeal, then the agreement still exists and is binding. Greg Heller said that is correct because they have a written agreement between the Neighbor Association and Hangtime Racetrack that in his opinion is enforceable through the court of law. Greg explained dropping the Administrative Appeal would not effect the agreement or the purpose of the agreement.

Mark Martens said the Board was discussing whether the Association could have the document recorded in the Recorders Office without it being notarized. Administrative Secretary, Erica Ginther, thought that the Association may be able to record it as a Miscellaneous document and it would not have to be notarized but she advised them to check with Susan Carr, the Fulton County Recorder, to be sure. Dan Walsh stated it was his understanding that the Recorder had to record anything you brought to them as long as it is not obscene. Greg Heller said the role of the Recorder is not to ensure that documents are legally binding, but they record information so that when people are buying property they can see whether or not there is anything in the title work that should cause them some concern.

Brenda Ross asked if it is possible for one person to sign for all owners on a deed. Greg Heller said yes it is possible and those are the types of issues that you could argue in court. Brenda Ross stated the Neighbor Association does not want to lose what they already have through the written agreement, so they decided to withdraw the petition regarding the Administrative Appeal.

Brenda Ross presented a letter of withdrawal for the petition, Docket #BZA 51-0902, 114 East Neighbor Association, Administrative Appeal (see attachment A).

It is duly noted there was no New Business reported at this time.

IN RE: PLAN DIRECTOR REPORT

Casi Cramer presented the Board with an update of permits, applications, violations, and complaints that have occurred in the Plan Commission Office (see attachment B).

Greg Heller enlightened the Board on the Oral Arguments given on December 6, 2002 regarding the Tam petition.

It is duly noted that there were no Public Comments or Board Comments presented

FULTON COUNTY BOARD OF ZONING APPEALS  
DECEMBER 11, 2002

Being no further business to come in front of the Board of Zoning Appeals, Mark Martens entertained a motion to adjourn the December 11, 2002 Board of Zoning Appeals meeting. Dan Walsh moved to adjourn the December 11, 2002 Board of Zoning Appeals meeting at 7:55 P.M. Debbie Barts seconded the motion. Motion carried as follows: Dan Walsh, Debbie Barts, Linda Herd, Joe Wegner, and Mark Martens being in favor and no one opposing.

FULTON COUNTY BOARD OF ZONING APPEALS

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ATTEST:

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Erica A. Ginther, Administrative Secretary